

unanimous consent that the rules of procedure of the Committee on Appropriations for the 117th Congress be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE COMMITTEE ON APPROPRIATIONS
COMMITTEE RULES—117TH CONGRESS

I. MEETINGS

The Committee will meet at the call of the Chairman.

II. QUORUMS

1. Reporting a bill. A majority of the members must be present for the reporting of a bill.

2. Other business. For the purpose of transacting business other than reporting a bill or taking testimony, one-third of the members of the Committee shall constitute a quorum.

3. Taking testimony. For the purpose of taking testimony, other than sworn testimony, by the Committee or any subcommittee, one member of the Committee or subcommittee shall constitute a quorum. For the purpose of taking sworn testimony by the Committee, three members shall constitute a quorum, and for the taking of sworn testimony by any subcommittee, one member shall constitute a quorum.

III. PROXIES

Except for the reporting of a bill, votes may be cast by proxy when any member so requests.

IV. ATTENDANCE OF STAFF MEMBERS AT CLOSED SESSIONS

Attendance of staff members at closed sessions of the Committee shall be limited to those members of the Committee staff who have a responsibility associated with the matter being considered at such meeting. This rule may be waived by unanimous consent.

V. BROADCASTING AND PHOTOGRAPHING OF COMMITTEE HEARINGS

The Committee or any of its subcommittees may permit the photographing and broadcast of open hearings by television and/or radio. However, if any member of a subcommittee objects to the photographing or broadcasting of an open hearing, the question shall be referred to the full Committee for its decision.

VI. AVAILABILITY OF SUBCOMMITTEE REPORTS

To the extent possible, when the bill and report of any subcommittee are available, they shall be furnished to each member of the Committee thirty-six hours prior to the Committee's consideration of said bill and report.

VII. AMENDMENTS AND REPORT LANGUAGE

To the extent possible, amendments and report language intended to be proposed by Senators at full Committee markups shall be provided in writing to the Chairman and Ranking Minority Member and the appropriate Subcommittee Chairman and Ranking Minority Member twenty-four hours prior to such markups.

VIII. POINTS OF ORDER

Any member of the Committee who is floor manager of an appropriations bill is hereby authorized to make points of order against any amendment offered in violation of the Senate Rules on the floor of the Senate to such appropriations bill.

IX. EX OFFICIO MEMBERSHIP

The Chairman and Ranking Minority Member of the full Committee are ex officio members of all subcommittees of which they are not regular members but shall have no vote

in the subcommittee and shall not be counted for purposes of determining a quorum.

TRIBUTE TO CHRISTINA NOLAN

Mr. LEAHY. Mr. President, I would like to pay tribute to a great Vermonter, Christina Nolan, a most dedicated public servant who has served as U.S. attorney for the District of Vermont since November 2017. She will be resigning her post at the end of this month, 11 years since she first joined the U.S. Attorney's Office, but her work and the strong partnerships she forged will carry on for many years to come.

A profile of Christina recently appeared in Vermont Business Magazine under the headline "A Born Advocate for Justice." And she has been just that. During her tenure, Christina worked to stem the deadly surge of heroin and fentanyl in our small State, and she has joined with Federal partners to slow the illegal trafficking of firearms. She has also used her voice to shine a spotlight on domestic violence and human trafficking, not only prosecuting critical cases but also highlighting the plight of victims who are caught in the path of such heinous crimes. Her personal approach to each and every case, signing off on every charging document in the office, as well as her commitment to victims and her dedication to upholding the rule of law are evident to anyone who has witnessed her work and her work ethic.

While Vermont's U.S. Attorney's Office is among the smallest in the country, it is fair to say that under Christina's leadership, the team has punched well above their weight. In one instance, her office set out to investigate kickbacks and fraudulent billing practices involving the electronic health records industry, unraveling a scheme that resulted in an \$8 billion national settlement with Perdue Pharma, which admitted to needlessly and shamelessly promoting the prescribed use of OxyContin, a highly addictive opioid.

During her time as U.S. attorney, Christina has forged strong relationships with her partners in Federal, State and local law enforcement circles, many of whom have shared with me how much they appreciated her engagement. In the courtroom, colleagues on both sides of the bench have lauded her fairness. A Federal judge, interviewed for the aforementioned magazine profile, spoke of her "quiet confidence" and her "natural courtroom presence: graceful and commanding."

I am proud to have worked with Gov. Phil Scott to recommend Christina Nolan for the position of U.S. attorney back in 2017. She has served Vermonters very well during her tenure. Marcelle and I wish Christina and her longtime partner, Jill, and their family our very best in future endeavors.

IMPEACHMENT

Mr. GRASSLEY. Mr. President, just barely a year ago, I was here making a similar statement. Impeachment is one of the most solemn matters to come before the Senate, but I worry that it's also becoming a common occurrence.

Before getting into the merits of this impeachment, it is important to reiterate that January 6 was a sad and tragic day for America. I hope we can all agree about that.

What happened here at the Capitol was completely inexcusable. It was not a demonstration of any of our protected, inalienable rights. It was a direct, violent attack on our seat of government. Those who plowed over police barricades, assaulted law enforcement, and desecrated our monument to representative democracy flouted the rule of law and disgraced our Nation. Six people, including two U.S. Capitol Police officers, now lie dead in the wake of this assault. The perpetrators must be brought to justice, and I am glad to see that many such cases are progressing around the country.

While the ultimate responsibility for this attack rests upon the shoulders of those who unlawfully entered the Capitol, everyone involved must take responsibility for their destructive actions that day, including the former President. As the leader of the Nation, all Presidents bear some responsibility for the actions that they inspire—good or bad. Undoubtedly, then-President Trump displayed poor leadership in his words and actions. I do not defend those actions and my vote should not be read as a defense of those actions.

I am a member of a Court of Impeachment. My job is to vote on the case brought by the House managers. I took an oath to render judgment on the Article of Impeachment sent to the Senate by the House of Representatives. We are confined to considering only the Articles charged and the facts presented.

First and foremost, I don't think this impeachment is proper under the Constitution. This is the first time the Senate has tried a former President. Whether or not it can do so is a difficult question. The Constitution doesn't say in black and white "Yes, the Senate can try a former President" or "No, it can't." In contrast, many State constitutions at the time of the founding specified that their legislatures could, so it's notable that our Federal charter did not. In order to answer this question it's therefore necessary to look at the text, structure, and history of the Constitution. That's what I have done. In the end, I do not think we have the ability to try a former President.

I start always with the Constitution, which gives Congress the power of impeachment. As I mentioned, impeachment was a feature in many State constitutions at the time, and it came from a power enjoyed by the English Parliament.

Impeachment in England was a powerful tool whereby Parliament could

hold individuals accountable for actions against the government without having to rely on the King to enforce it. It applied not just to sitting government officials but also to former government officials and even to private individuals. It was not simply a way to remove government officials but a general method of punishing the enemies of Parliament, including with fines, jail time, or even death.

This is not the system established by our Constitution. Our Constitution restricts the power of impeachment in two important ways. First, it says that Congress can't just impeach anyone: only the President, the Vice President, and "all civil Officers of the United States" can be impeached. It then restricts the penalties for impeachment to removal from office and disqualification.

A former President is not in any of those three categories. He is not the President. In fact, the Constitution also specifies that when the President is impeached, the Chief Justice of the Supreme Court shall preside over the trial. Chief Justice Roberts has not presided over this trial, thus making it clear that it is not the trial of a President. He is obviously not the Vice President. He is not a civil officer of the United States.

Because he does not fall into any of these categories, I don't think that this trial was appropriate.

Moving beyond the text of the Constitution, the history of the Senate confirms this. The U.S. Senate has never convicted a former official in an impeachment. The Senate has tried three individuals who were former officers—William Blount a former Senator in 1798; William Belknap a former Secretary of War, in 1876; and Robert Archibald an incumbent Commerce Court judge, in 1912, tried as well for conduct while a district judge). Belknap is the only executive branch member tried after leaving office. None was convicted for his prior conduct. Archibald was convicted on counts relating to his incumbent judicial service on the Commerce Court. In all three cases, the jurisdictional question loomed large at the trial and was cited as an important argument justifying the acquittals. In other words, Senate practice is consistent: It has never convicted a former official in an impeachment.

Between the text of the Constitution and the consistent practice of the Senate, I'm convinced that this is not an appropriate use of our power. While I realize there are arguments on the other side from learned scholars, to me, they do not overcome these problems of text and history.

That's why I voted twice to deal with this impeachment on jurisdictional grounds. But my position didn't prevail, with the majority Democrats voting in lockstep to proceed, and we went to trial. As I've said, even though I think this is inappropriate, I kept an open mind during the process, and I listened to both sides as they presented their evidence.

The House managers tried to prove that President Trump incited an insurrection. That is a difficult argument to make. There were many other Articles over which they could have impeached President Trump, but this is what the House of Representatives chose. They didn't meet their burden.

Before getting to the merits of the charge, I need to point out that this impeachment trial has not aligned with principles of due process of law. Other impeachments have involved significant fact-finding in the House, where proper legal formalities are followed, witnesses are heard from and cross-examined, and hard evidence is reviewed. Here there were no hearings in the House. The evidence presented was mostly video montages and news reports. We even had the unusual spectacle of voting to call witnesses for the first time as the trial was ending only to immediately reverse course and call none. Given the seriousness of the situation, I think we should expect better when the House exercises its constitutional duty of impeachment.

This issue involves complicated legal questions. In our legal system, though, it is very difficult for speech to rise to the level of incitement. "Incitement" is a legal term of art. Usually it takes place in the context of incitement to violence. Incitement, in our legal system, doesn't mean "encouraging" violence or "advocating" violence or even "espousing" violence. It means intentionally causing likely violence. Because the Article of Impeachment uses the word "incitement," I need to evaluate President Trump's actions under the rubrics of the law of incitement, which were set out in the Supreme Court case of *Brandenburg v. Ohio*. In that case the Court held that incitement required speech that, first, encourages "imminent lawless action" and, second, "is likely to incite or produce such action." In other words, in order to succeed, the House managers must have shown that President Trump's speech was intended to direct the crowd to assault the Capitol and that his language was also likely to have that effect.

As I said before, what happened on January 6 was tragic. We can't let it happen again. But the House managers have not sufficiently demonstrated that President Trump's speech incited it. While I will have more to say about President Trump's conduct, the fact is that he said this: "I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard." That speech is not an incitement to immanent lawless action as established in the case law. I wish the crowd would have listened to him.

Just because President Trump did not meet the definition of inciting insurrection does not mean that I think he behaved well.

To be clear, I wanted President Trump to win in November. I gave over 30 speeches on his behalf in Iowa the

week before the election. He, like any politician, is entitled to seek redress in the courts to resolve election disputes. President Trump did just that, and there's nothing wrong with it. I supported the exercise of this right in the hopes that allowing the election challenge process to play out would remove all doubt about the outcome. The reality is, he lost. He brought over 60 lawsuits and lost all but 1 of them. He was not able to challenge enough votes to overcome President Biden's significant margins in key States. I wish it would have stopped there.

It didn't. President Trump continued to argue that the election had been stolen even though the courts didn't back up his claims. He belittled and harassed elected officials across the country to get his way. He encouraged his own, loyal Vice President, Mike Pence, to take extraordinary and unconstitutional actions during the electoral college count. My vote in this impeachment does nothing to excuse or justify those actions. There's no doubt in my mind that President Trump's language was extreme, aggressive, and irresponsible.

Unfortunately, others share the blame in polluting our political discourse with inflammatory and divisive language. As President Trump's attorneys showed, whatever we heard from President Trump, we had been hearing from Democrats for years. National Democrats, up to and including President Biden and Vice President Harris, have become regular purveyors of speech dismissing and even condoning violence. It's not surprising that when they talk about taking the "fight" to "the streets" organizations like antifa actually take to the streets of our cities with shields and bats and fists, destroying lives and livelihoods.

Yes, I think President Trump should have accepted President Biden's victory when it became clear he won. I think Secretary Clinton should have done the same thing in 2016. But as recently as 2019, she questioned the legitimacy of Trump's election, saying "[Trump] knows he's an illegitimate president. I believe he understands that the many varying tactics they used, from voter suppression and voter purging to hacking to the false stories . . . there were just a bunch of different reasons why the election turned out like it did."

If there's one lesson I hope we all learn from not only last year but the last few years, it's that we all need to tone down the rhetoric. Whether it's the destructive riots we saw last summer or the assault on the Capitol, too many people think that politics really is just war by another name. To far too many people, our democracy isn't free people coming together to make life better for our communities. It's a street fight.

We don't need to agree on everything. In fact, part of what makes our democracy great is that we don't agree on everything. But we do need to resolve these differences with debate and

with elections, not with violence. Whether the violence comes from the left or the right, it's wrong. The same goes for speech that claims to define enemies by political views or affiliations.

We're all Americans, always trying to form a more perfect union. We have more in common than what divides us. It's high time those of us who have been elected to serve lead by example. We can take the high road. We can tone down the rhetoric. We can be respectful even when we disagree strongly. If we don't, we'll be betraying the trust that the American people have placed in us, and we'll endanger the democracy and the freedom that so many of us have worked to preserve.

These are difficult issues I have considered over the past week, but in the end, I am confident in what I think is the correct position. We do not have the authority to try a private citizen like former President Trump. Even if we did, he should have been accorded the protections of due process of law in his trial. And even if we assume he has been, the House managers still did not prove that he committed incitement to insurrection, the specific crime of which he stands accused. This does not excuse President Trump's conduct on and around January 6 of this year, it satisfies my oath as a U.S. Senator in this Court of Impeachment. I therefore voted to acquit.

Mr. REED. Mr. President, I ask unanimous consent to have my opinion memorandum in the impeachment trial of President Donald J. Trump be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OPINION MEMORANDUM OF UNITED STATES SENATOR JOHN F. REED IN THE IMPEACHMENT TRIAL OF PRESIDENT DONALD JOHN TRUMP

I. FINDINGS

On January 13, 2021, the United States House of Representatives passed House Resolution 24,¹ "Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors."

Based on the evidence in the record, the arguments of the House Impeachment Managers, and the arguments of President's Counsel, I conclude as follows: Mr. Trump has violated his oath to take care that the laws be faithfully executed and has acted in a manner that is fundamentally incompatible with the constitutional order. The House Impeachment Managers have proven that Mr. Trump's incitement of insurrection amounts to the constitutional standard of "high Crimes and Misdemeanors" for which the remedy of conviction and disqualification is warranted.

II. THE CONSTITUTIONAL GROUNDS FOR IMPEACHMENT

"The Senate shall have the sole Power to try all Impeachments."² With these few words, the Framers of the Constitution entrusted the Senate with the most awesome power within a democratic society: whether to remove an impeached president from office.

A. High Crimes and Misdemeanors

The Constitution states, "The President, Vice President and all civil Officers of the

United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."³

"Treason" and "Bribery" are foundational impeachable offenses. No more heinous example of an offense against the constitutional order exists than betrayal of the nation to an enemy or betrayal of duty for personal enrichment. A President commits treason when he levies war against the United States or gives comfort or aid to its enemies.⁴ As the House Judiciary Committee explained, a President engages in impeachable bribery when he "offers, solicits, or accepts something of personal value to influence his own official actions."⁵

In interpreting "high Crimes and Misdemeanors," we must not only look to the Federalist Papers and the records of the Constitutional Convention, but also to the contemporary and foundational writings on Impeachment available to the Framers.

Sir William Blackstone, whose influential Commentaries on the Laws of England were published from 1765–1770, discussed a classification of crimes he termed "public wrongs, or crimes and misdemeanors" that he defined as breaches of the public duty an individual owed to their entire community.⁶ Blackstone viewed treason, murder, and robbery as "public wrongs," not only because they cause injury to individuals but also because they "strike at the very being of society."⁷

Richard Wooddeson, a legal scholar who began giving lectures on English law in 1777, defined impeachable offenses as misdeeds that fail to clearly fall under the jurisdiction of ordinary tribunals. These wrongs were "abuse[s] of high offices of trust" that damaged the commonwealth.⁸

Much the same as Blackstone and Wooddeson, Alexander Hamilton included the dual components of abuse of public trust and national harm in his definition of impeachable crimes and misdemeanors. In Federalist Paper No. 65, Hamilton defined an impeachable offense as "those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself."⁹

B. The Constitutional Debates

Adding impressive support to these consistent views of the meaning of the constitutional term, "high Crimes and Misdemeanors," is the history of the deliberations at the Constitutional Convention.

The convention delegates considered limiting Impeachment to treason and bribery. However, they concluded that these enumerated offenses alone could not anticipate every manner of profound misconduct that a future president might engage in.¹⁰ George Mason, a delegate from Virginia, declared that "high crimes and misdemeanors" would be an apt way to further capture "great and dangerous offences" or "[a]ttempts to subvert the Constitution."¹¹

This wording would also set the necessarily high threshold for Impeachment that would be proportional to the severe punishment of removing an elected official and disqualification from holding future public office. Further insight is provided by James Iredell, a delegate to the North Carolina Convention that ratified the Constitution, who later served as a Justice of the United States Supreme Court. During the Convention debates, Iredell stated:

The power of impeachment is given by this Constitution, to bring great offenders to punishment . . . This power is lodged in

those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot be easily reached by an ordinary tribunal.¹²

Iredell's understanding sustains the view that an impeachable offense must cause "great injury to the community." Private wrongdoing, without a significant, adverse effect upon the nation, cannot constitute an impeachable offense. James Wilson, a delegate to the Federal Constitutional Convention and, like Iredell, later a Supreme Court Justice, wrote that Impeachments are "proceedings of a political nature . . . confined to political characters, to political crimes and misdemeanors, and to political punishments."¹³

Later commentators expressed similar views. In 1833, Justice Joseph Story quoted favorably from the scholarship of William Rawle, who concluded that the "legitimate causes of impeachment . . . can have reference only to public character, and official duty . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subject of impeachment."¹⁴

This line of reasoning is buttressed by the careful and thoughtful work of the House of Representatives during the Watergate proceedings. The Democratic staff of the House Judiciary Committee concluded that, "[b]ecause impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office."¹⁵

The deliberations at the Constitutional Convention also demonstrate a conscious movement to narrow the terminology as a means of raising the threshold for the Impeachment process to require an offense against the State.

Early in the debate on the issue of presidential Impeachment in July of 1787, it was suggested that Impeachment and removal could be founded on a showing of "malpractice," "neglect of duty," or "corruption."¹⁶ By September of 1787, the issue of presidential Impeachment had been referred to the Committee of Eleven, which was created to resolve the most contentious issues.

The Committee of Eleven considered whether the grounds for Impeachment should be "treason or bribery."¹⁷ This was significantly more restricted than the amorphous standard of "malpractice," too restricted, in fact, for some delegates. George Mason objected and suggested that "maladministration" be added to "treason and bribery."¹⁸ James Madison opposed this suggestion as being "equivalent to a tenure during pleasure of the Senate."¹⁹ Mason responded by further refining his suggestion and offered the term "other high crimes and misdemeanors against the State."²⁰ The Mason language was a clear reference to the English legal history of Impeachment. Mason's proposal explicitly narrowed these offenses to those "against the State." The Convention itself further clarified the standard by replacing "State" with the "United States."²¹

At the conclusion of the substantive deliberations on the constitutional standard of Impeachment, it was obvious that only serious offenses against the governmental system would justify Impeachment and subsequent removal from office. However, the Committee of Style applied the final stylistic touches to the Constitution. This Committee had no authority to alter the meaning of the carefully debated language and

could only impose a stylistic consistency through, among other things, the elimination of redundancy. In its zeal to streamline the text, the words “against the United States” were eliminated as unnecessary to the meaning of the passage.²²

The weight of both authoritative commentary and the history of the Constitutional Convention combines to provide convincing proof that the Impeachment process was reserved for serious breaches of the constitutional order that threaten the country in a direct and immediate manner.

C. An Impeachable Offense Is Not Limited to Criminal Liability or a Defined Offense

Article I, Section 3 of the United States Constitution provides that “Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”²³ As Delegate James Wilson wrote, “impeachments, and offenses and offenders impeachable [do not come] within the sphere of ordinary jurisprudence. They are founded on different principles, are governed by different maxims, and are directed to different objects: for this reason, the trial and punishment of an offense on an impeachment, is no bar to a trial and punishment of the same offense at common law.”²⁴ The independence of the Impeachment process from the prosecution of crimes underscores the function of Impeachment as a means to remove a president from office, not only because of criminal behavior, but because the president poses a threat to the constitutional order. Criminal behavior is not irrelevant to an Impeachment, but it only becomes decisive if that behavior imperils the balance of powers established in the Constitution.

The assertion that an impeachable offense must be predicated on a criminal act goes against the well-established consensus of the legal community. For example, Mr. Trump’s former Attorney General, William Barr, wrote in a 2018 memo to the Department of Justice (DOJ) when he was still in private practice, that the President “is answerable for any abuses of discretion and is ultimately subject to the judgment of Congress through the impeachment process [which] means that the president is not the judge in his own cause.”²⁵ As Mr. Barr makes clear, Impeachment does not need to be based on a crime.

Furthermore, any assertion that an impeachable offense must involve the violation of an “already known or established” law, even if not criminal, is not supported by the constitutional record. In advocating for the inclusion of Impeachment at the Constitutional Convention, James Madison made the case that the country must be protected against any number of abuses that a president could engage in and which might cause permanent damage to the country. Madison wrote that:

[It was] indispensable that some provision should be made for defending the Community [against] the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security[. . .] He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers.²⁶

Confining Impeachment to criminal or even codified offenses goes against the mainstream consensus on the meaning of “high Crimes and Misdemeanors” and would fail to capture the universe of harms to the constitutional order in which a President could engage.

D. Conclusion

Authoritative commentary on, together with the structure of, the Constitution makes it clear that the term, “other high Crimes and Misdemeanors,” encompasses conduct that involves the president in the impermissible exercise of the powers of his office to upset the constitutional order. Moreover, since the essence of Impeachment is removal from office, rather than punishment for offenses, there is a strong inference that the improper conduct must represent a continuing threat to the American people and the Constitution.

IV. STANDARD OF PROOF

In an Impeachment trial, each Senator has the obligation to establish the burden of proof he or she deems proper.²⁷ The Founding Fathers believed maximum discretion was critical for Senators confronting the gravest of constitutional choices.²⁸ Differentiating Impeachment from criminal trials, Alexander Hamilton argued, in Federalist Paper No. 65, that Impeachments “can never be tied down by such strict rules . . . as in common cases serve to limit the discretion of courts in favor of personal security.”²⁹ In this regard, Hamilton further distinguished Impeachment proceedings from a criminal trial by stressing that an impeached official would be subject to the established rules of criminal prosecution after Impeachment.³⁰

However, what exact constitutional standard should be used remains debatable. Practical concerns related to utilizing the Impeachment power should be considered when determining the standard of proof required. Too low of a standard may lead to removal, even if significant doubts exist. A “. . . high ‘criminal’ standard of proof could mean, in practice, that a man could remain president whom every member of the Senate believed to be guilty of corruption, just because his guilt was not shown ‘beyond a reasonable doubt.’”³¹

When uncertain about the standard of proof to apply, it is worth reviewing the writings of eminent scholars. In doing so, I have found a closer approximation to what the standard should be in many Impeachment trials as compared to those used in general legal practice: “[o]verwhelming preponderance of the evidence” . . .³² Yet, I believe that the severity of removing a president of the United States warrants an even higher bar. As such, a definition slightly modified, but modeled on that proposed standard, is more applicable: overwhelmingly clear and convincing evidence. This standard more closely comports with historical analysis of the Founders’ desire to separate criminal law and Impeachment and the arguments made by scholars, while reflecting the serious constitutional harms alleged in the Article of Impeachment before the Senate.

V. CONSTITUTIONALITY OF IMPEACHMENT TRIAL

The President’s Counsel has argued that an Impeachment trial conducted after a president leaves office is unconstitutional. Specifically, they write, in their trial brief, “It is denied that the quoted provision [Article I, Section 4] currently applies to the 45th President of the United States since he is no longer ‘President.’”³³ The President’s Counsel hinge their argument on the wording of Article II, Section 4, which reads, “The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” The President’s Counsel argue that since Mr. Trump is no longer the president,

“[T]he clause ‘shall be removed from Office on Impeachment for . . .’ is impossible for

the Senate to accomplish, and thus the current proceeding before the Senate is *void ab initio* as a legal nullity that runs patently contrary to the plain language of the Constitution . . . Since removal from office by the Senate of the President is a condition precedent which must occur before, and jointly with, ‘disqualification’ to hold future office, the fact that the Senate presently is unable to remove from office the 45th President whose term has expired, means that Averment 1 is therefore irrelevant to any matter before the Senate.”³⁴

Such logic ignores the historical context in which the Impeachment power was drafted, willfully misinterprets the language of the Constitution, rejects the precedent set by previous Senates, and promotes the dangerous concept of a “January Exception.”³⁵

Impeachment was not a revolutionary concept at the time the U.S. Constitution was drafted. The concept had long been part of English political custom, which framed much of the Founder’s understanding of government.³⁶ Indeed, Alexander Hamilton explicitly stated in Federalist No. 65 that the Impeachment power was borrowed from English political history.³⁷ Thus, we can understand the bounds of the Impeachment power from precedents set in English political history. Two examples from the 18th century are illustrative of the impeachability of former officials. First, “[i]n 1725, former Lord Chancellor Macclesfield was impeached and convicted for acts of bribery committed during his tenure in office.”³⁸ Second, at the time of the Philadelphia Convention, Parliament was preparing to conduct an Impeachment trial against Warren Hastings, the former Governor General of Bengal. These proceedings commenced after Hastings had retired from his office. “The Framers were acutely aware of the Hastings proceeding, with George Mason raising it as an example during debate on the Impeachment clauses.”³⁹ If the Framers had misgivings about Impeachment of former officials, a concept that would have been on the public mind given Mr. Hastings’ impending Impeachment trial, surely they would have clarified the wording of the Impeachment power in the U.S. Constitution.

The practice of impeaching former officers was also common in the early state governments. “Between 1776 and 1787, 10 of the newly independent states adopted constitutions that included impeachment provisions. Five specifically permitted late Impeachment; no state explicitly forbade it.”⁴⁰ Moreover, some state constitutions only allowed the Impeachment of former officials, meaning that future disqualification from office was central to the very purpose of Impeachment.⁴¹ For example, Thomas Jefferson underwent an Impeachment inquiry in 1781 after his tenure as governor ended.⁴² What purpose could such a late inquiry have except to attempt to disqualify a former official from holding office again in the future? The influence of the early state constitutions on the drafting of the U.S. Constitution is widely accepted. This influence no doubt extended to the Framers’ understanding of the Impeachment power as including former officials.⁴³

Indeed, the language of the U.S. Constitution proves this out. Article I, Section 3, Clause 6 states, “The Senate shall have the sole Power to try all Impeachments.” That is, the Senate has the power to conduct a trial for any Impeachment commenced by the House of Representatives without qualification regarding its timing. The House impeached Mr. Trump, and it is now in the constitutional power of the Senate to conduct an Impeachment trial. Article I further outlines two possible penalties in any Impeachment trial: removal and disqualification.

The Senate cannot exceed these penalties, nor are these penalties necessarily linked by the language of the text. The Senate has the power to remove a president without also disqualifying him or her from future office. Likewise, legal scholars assert that disqualification from office need not follow removal from office.⁴⁴ Such a reading would neuter the ability of the Senate to disqualify officials from future office upon their resignation. Hence, an official accused of crimes against the political order could simply resign to avoid punishment and potentially retake office in the future. The Framers understood that the power of a demagogic president extends beyond his tenure of office. The disqualification component of the Impeachment power is the constitutional method for addressing this dangerous potentiality, for it establishes “a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country.”⁴⁵

In accordance with English political history, the early state constitutions, and the clear language of the U.S. Constitution, the Senate has repeatedly asserted its right to conduct an Impeachment trial of former government officials. The first Impeachment trial concerned Senator William Blount of Tennessee on the charge of conspiracy. After the Senate expelled Blount from the body in July of 1797, the House brought five articles of Impeachment against the former senator in January of 1798 with the intention of disqualifying him from holding office in the future.⁴⁶ Most scholars agree that the Senate dismissed the case on the grounds that the Impeachment power does not extend to Members of Congress.⁴⁷ The Senate did not, however, dismiss the case on the basis that Blount was a former official.⁴⁸ The Senate once again asserted its right to conduct an Impeachment trial of a former official in the 1876 case of ex-Secretary of War William Belknap. The House voted to impeach Belknap after he resigned. The Senate then debated the constitutionality of late impeachment before asserting in a 37–29 vote that it had the power to try an ex-officer.⁴⁹ Though Belknap was not ultimately convicted, the Senate had decided that it had the power to convict and disqualify an ex-official. Congress acted once more in the 1926 case of federal judge George English. The House of Representatives chose not to further pursue Impeachment after English’s resignation, but the House Managers declared “the resignation of Judge English in no way affects the right of the Senate, sitting as a court of impeachment, to hear and determine [the case].”⁵⁰ Several Senators similarly declared the jurisdiction of the Senate in the case of Judge English.⁵¹ As these cases demonstrate, the Senate has repeatedly declared its late-Impeachment powers, though it has rarely chosen to pursue Impeachment.⁵²

Finally, the denial of late impeachment promotes the dangerous and unconstitutional idea of a “January Exception.” One of the central concerns of the Framers was the diffusion of power across branches in a system of checks and balances to prevent any one branch, but particularly the executive, from gaining too much power. Impeachment is the last line of defense created to hold officials accountable for their abuse of those powers. Hence the time between election and inauguration is not a consequence-free period for an outgoing president. A president who commits an impeachable offense on the night before his term ends is still accountable for those actions when he leaves the Oval Office. After his term as president, John Quincy Adams proclaimed, “I hold myself, so long as I have the breath of life in my body, amenable to impeachment by [the] House for everything I did during the time I held any public office.”⁵³ The Framers of the

Constitution did not intend to grant Mr. Trump a January reprieve from accountability. He must be held accountable for his actions during the last weeks of his presidency.

VI. DUE PROCESS

The President’s Counsel assert that the Impeachment inquiry is defective because of a lack of due process protections for Mr. Trump. However, the Constitution does not provide any guidance about what procedures are proscribed in an Impeachment trial. Article II, Section 3 states, “The Senate shall have the sole power to try all Impeachments.”⁵⁴ Alexander Hamilton provides context to this in *Federalist Paper No. 65*, saying that Impeachments “can never be tied down by such strict rules . . . as in common cases serve to limit the discretion of courts in favor of personal security.”⁵⁵

Specifically, President’s Counsel asserts that the Speaker of the House purposefully held onto the Article of Impeachment, passed by the House of Representatives, in order to ensure that Mr. Trump’s term would end before a Senate trial commenced. However, at the time H. Res. 24 passed, the Senate was in recess and not scheduled to return until January 19th. The Senate Minority Leader urged the Senate Majority Leader to bring the Senate back into session immediately in order to receive the Article of Impeachment. However, the Senate Majority Leader rejected this request, meaning that even if the House of Representatives had tried to send the Article to the Senate immediately after passage, it would not have been considered until the Senate was back in session.⁵⁶

President’s Counsel also assert that the House of Representatives did not provide proper due process because it did not hold hearings on the Article of Impeachment. Manager Lieu analogized the present facts to a case where crimes are committed in plain view, and prosecutors do not have to spend a prolonged time investigating before pressing charges.⁵⁷ In this case, the events in question—the “Save America” rally, the Electoral Certification, and the ensuing insurrection—were widely broadcast on television and in news publications. Those who took part in the attack also documented their participation over social media including on Twitter, Instagram, and YouTube.⁵⁸ In the aftermath of the insurrection, participants were arrested and indicted for their unlawful and violent actions, and their charging documents were available to the public.⁵⁹

In addition, President’s Counsel, throughout this case, has conflated the requirements of an Impeachment proceeding with that of a criminal case, where the Due Process Clause of the Fifth Amendment applies. These claims are spurious at best. As constitutional scholar Michael Gerhardt stated in regards to Mr. Trump first Impeachment, “First, the [Due Process] clause does not apply because none of the interests protected by the due process clause are being denied here—the sanctions are removal and disqualification but not the deprivation of life, liberty, or property, which the clause protects. Second, even if due process applies, it has been satisfied here: The minimal requirements of due process are an impartial decision-maker and notice. The president has had plenty of notice about the impeachment effort, and the Constitution designates senators as the impartial decision-makers.”⁶⁰

“The Supreme Court has explained . . . that due process is not a ‘technical conception with a fixed content unrelated to time, place, and circumstances.’ Instead, the concept is ‘flexible and calls for such procedural protections as the particular situation demands.’”⁶¹ In an Impeachment, the obliga-

tion of the Senate is to accord the president, as the accused, the right to conduct his defense fairly, while respecting the House of Representative’s exclusive constitutional prerogative to bring Articles of Impeachment. At the core of the Senate’s task is the fundamental understanding that our system of laws recognizes the rights of defendants and the responsibilities of the prosecution to prove its case.

Based on the above analysis, I find that there is overwhelmingly clear and convincing evidence that Mr. Trump was afforded due process in this Impeachment proceeding.

VII. INCITEMENT OF INSURRECTION

House Resolution 24 alleges that, in the conduct of his office, Mr. Trump incited an insurrection, in violation of his constitutional duty to take care that the laws be faithfully executed, and in subversion of the constitutional order. I find that there is overwhelmingly clear and convincing evidence that Mr. Trump committed impeachable conduct. As I will further explain, Mr. Trump must be convicted and disqualified from holding office for the conduct described in H. Res. 24.

A. Legal Standards for Incitement

As explained in Section III, Congress is bound neither by civil nor criminal law in determining whether an offense meets the standard of “high Crimes or Misdemeanors.” However, existing legal frameworks for “incitement” are helpful for analyzing and putting Mr. Trump’s words and conduct into context.

Black’s Law Dictionary defines incitement generally as “the act or an instance of provoking, urging on, or stirring up.”⁶² Specifically in regards to criminal law, Black’s Law Dictionary defines incitement as “the act of persuading another person to commit a crime.”⁶³

A group of constitutional law scholars explained that, for the purposes of Impeachment, a determination of whether a president’s speech or conduct is protected must primarily take into account whether a president’s words are consistent with the Constitution⁶⁴ and the oath to “faithfully execute the office of President of the United States, and . . . preserve, protect and defend the Constitution of the United States.”⁶⁵ For example, if a president said “I no longer promise to support and defend the Constitution of the United States” or “I no longer recognize Congress as a co-equal branch of government,” these statements would certainly be inherently antithetical to the constitutional order that the president swore to uphold. While these statements may be lawful and protected by the Constitution in another context, they would certainly be impeachable.

Turning to the definition of “insurrection” itself, the *Corpus Juris Secundum* defines it as “the act of rising in open resistance against established authority or government, or as any open and active opposition of a number of persons to the execution of the laws of the United States of so formidable a character as to deny, for the time being, the authority of the government, even though not accompanied by bloodshed and not of sufficient magnitude to render success probable.”⁶⁶

Based on these sources, I will examine the following questions, in order to determine whether Mr. Trump incited his supporters to commit insurrection.

(1) What was Mr. Trump’s pattern of speech or conduct prior to the January 6th “Save America” rally?

(2) Did Mr. Trump foreseeably or recklessly solicit his supporters to believe his election lies, and know that his supporters would take action based on these lies?

(3) Did Mr. Trump's speech or conduct drive his supporters to commit unlawful or violent acts on January 6th?

(4) What steps did Mr. Trump take once the rioters had breached the Capitol?

B. Leading Up to January 6, 2021, Mr. Trump Propagated a False Narrative that the Election Had Been Stolen and Supported Violent Rhetoric

To determine whether Mr. Trump engaged in incitement, it is instructive to look at a timeline of Mr. Trump's statements, direct acts, and actions taken at his behest, leading up to January 6th.

a. Statements and Conduct Regarding Voter Fraud Before the 2020 Election

Even before the November 2020 election, Mr. Trump gave credence to the idea that mass voter fraud would be inevitable, and the only way he would lose was if the election were stolen. For example, in July, Mr. Trump tweeted "*With Universal Mail-In Voting (not Absentee Voting, which is good), 2020 will be the most INACCURATE & FRAUDULENT Election in history.*"⁶⁷ At an August rally in Wisconsin, Trump said "The only way we're going to lose this election is if the election is rigged, remember that . . . It's the only way we're going to lose this election. So we have to be very careful."⁶⁸ In September, he told reporters, from the White House lawn, "I'm not sure that it [the election] can be [honest], I don't know that it can be with this whole situation, unsolicited ballots, they're unsolicited, millions being sent to everybody."⁶⁹

Before the election took place, Mr. Trump also refused to say whether he would accept the election results. In a July interview with Chris Wallace, when asked directly whether he would accept the results of the election, Trump said "Look, you—I have to see. No, I'm not going to just say yes."⁷⁰ In September, when asked by a reporter if he would commit to a peaceful transfer of power, Mr. Trump implied that he would not, saying "Get rid of the ballots and you'll have a very peaceful—there won't be a transfer, frankly. There will be a continuation." In the same month, when asked by a reporter whether the election results would be legitimate only if he won, Mr. Trump did not give a direct answer, saying, "So we have to be very careful with the ballots. The ballots—that's a whole big scam."⁷¹

b. Statements and Conduct Regarding Voter Fraud After 2020 Election

Once the 2020 election was over, Mr. Trump made it clear that he would concede under no circumstances, and continued his full-court press urging Americans not to accept the election results. In a statement after Mr. Biden was projected the winner, Mr. Trump said, "*The simple fact is this election is far from over . . . Beginning Monday, our campaign will start prosecuting our case in court to ensure election laws are fully upheld and the rightful winner is seated. The American People are entitled to an honest election: that means counting all legal ballots, and not counting any illegal ballots. This is the only way to ensure the public has full confidence in our election.*"⁷²

Mr. Trump escalated his attack on the election results by posting a speech on December 2nd, which he taped from behind the presidential lectern and characterized as potentially "the most important speech I've ever made."⁷³ Over the course of 46 minutes, Mr. Trump repeated the same baseless claims of voter fraud, and refused to acknowledge his loss. Mr. Trump said the nation's election system was "under coordinated assault and siege" and declared that it was "statistically impossible" for him to have lost to Mr. Biden.⁷⁴ His overall claim was that, "This election is about great voter

fraud, fraud that has never been seen like this before."⁷⁵

The day after Christmas 2020, Mr. Trump sought to escalate his narrative that there was a mass effort to deprive him of a second term. He sent out a series of tweets attacking executive branch agencies, the federal judiciary, and Senate Republicans, claiming that they had not done enough to prevent voter fraud. He tweeted that the Supreme Court "*has been totally incompetent and weak on the massive Election Fraud that took place.*" He also tweeted that "*The 'Justice' Department and the FBI have done nothing about the 2020 Presidential Election Voter Fraud.*" Furthermore, he leveled the claim that "*If a Democrat Presidential Candidate had an Election Rigged & Stolen, with proof of such acts at a level never seen before, the Democrat Senators would consider it an act of war, and fight to the death. Mitch & the Republicans do NOTHING.*"⁷⁶

As late as January 4th, Mr. Trump held a rally before the Georgia Senate runoff saying, "When you win in a landslide and they steal it and it's rigged, it's not acceptable. Not acceptable." The crowd chanted, "Fight for Trump!" and Mr. Trump responded, "They're not going to take the White House. We're going to fight like hell."⁷⁷

In addition to his dishonest rhetoric on election fraud, Mr. Trump took concrete steps to bend reality to match what he wanted. As I will explain in more detail in Section VIII, Mr. Trump used any means necessary to cajole, intimidate, and threaten individuals at all levels of government to use their authority to reject, and in some cases alter, the electoral votes for Mr. Biden.⁷⁸

It is important to note that Mr. Trump forcefully pushed these lies, no matter how divorced from reality they became. In the weeks after the election, it became painstakingly clear that Mr. Biden was the winner, as states moved to certify his results. In states where the Trump campaign asked for election audits, subsequent recounts provided no compelling evidence that Mr. Trump had won by a landslide.⁷⁹ He and his allies filed and lost over 60 lawsuits alleging voting irregularities in state and federal court, including the Supreme Court.⁸⁰ His Attorney General attested that the Justice Department discovered no voting fraud "on a scale that could have effected a different outcome in the election."⁸¹ Top election officials put out a statement saying, "The November 3rd election was the most secure in American history . . . There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised."⁸² The day before the Capitol insurrection, even Vice President Mike Pence told Mr. Trump that he had a constitutional duty to certify the true winner of the election, which was Mr. Biden.⁸³

Yet, throughout all of this and despite undeniable evidence to the contrary, Mr. Trump doggedly claimed that he had won the election, and that his supporters should help vindicate him. He lied to the American people, and did so knowingly and deliberately.

c. Mr. Trump Invoked Violent Means to Further His Re-Election

Leading up to January 6th, Mr. Trump supported—either tacitly or outright—the use of violent and menacing tactics by his supporters. For example, in the spring of 2020, Mr. Trump embraced the backlash against COVID-19 policies to aid his re-election. Following armed protests over stay-at-home orders, he tweeted "*LIBERATE MINNESOTA!*", "*LIBERATE MICHIGAN!*" and "*LIBERATE VIRGINIA, and save your great 2nd Amendment. It is under siege!*"⁸⁴ During some of the anti-lockdown protests, armed groups attempted to derail the legislative proceedings

at statehouses in Michigan, Idaho, and Oregon.⁸⁵ These disruptive and aggressive methods were in essence a prelude to what happened during the assault on the Capitol.

This anger boiled over when six men plotted to kidnap Michigan Governor Gretchen Whitmer because they were angry about the state's coronavirus policies.⁸⁶ When the Federal Bureau of Investigation foiled the plot, Mr. Trump added fuel to the fire, and attacked Governor Whitmer over Twitter. He tweeted, "*Governor Whitmer of Michigan has done a terrible job. She locked down her state for everyone, except her husband's boating activities. . . . My Justice Department and Federal Law Enforcement announced . . . today that they foiled a dangerous plot against the Governor of Michigan. Rather than say thank you, she calls me a White Supremacist—while Biden and Democrats refuse to condemn Antifa, Anarchists, Looters and Mobs that burn down Democrat run cities.*"⁸⁷

Furthermore, in November 2020, Mr. Trump embraced a group of his followers who sought to intimidate supporters of his political opponent. He posted a video of his supporters in different cars surrounding a Biden campaign bus in Texas. Mr. Trump cheered this kind of intimidation, tweeting, "*I LOVE TEXAS*" and "*In my opinion, these patriots did nothing wrong.*"⁸⁸ At a rally in Michigan, Mr. Trump even praised his supporters' actions saying, "Did you see the way our people, they were, ya know, protecting this bus . . . because they're nice . . . They had hundreds of cars. Trump! Trump! Trump and the American flag."⁸⁹

After Mr. Biden was declared the winner, Mr. Trump focused his ire in the following weeks on changing the election results in Georgia. Mr. Trump's relentless claims of voter fraud in Georgia were followed by a wave of death threats against state election officials. Gabriel Sterling, an election official in Georgia, pleaded with Mr. Trump to denounce the threats of violence, clearly articulating the risks of failing to do so. Sterling said, "Mr. President, it looks like you likely lost the state of Georgia. We're investigating. There's always a possibility, I get it, and you have the rights to go through the courts. What you don't have the ability to do—and you need to step up and say this—is stop inspiring people to commit potential acts of violence. Someone's going to get hurt. Someone's going to get shot. Someone's going to get killed. And it's not right."⁹⁰

d. Mr. Trump Supported Extremist Groups

Mr. Trump made statements supporting, or failing to condemn members of extremist groups, many of whom came together to storm the Capitol on January 6th.

Famously, during the first presidential debate on September 29th, when asked to condemn white supremacist groups, like the Proud Boys, Trump refused. Instead, he announced, "Proud Boys—stand back and stand by."⁹¹ The Proud Boys group took this as an explicit endorsement of their violent tactics and ideology.⁹² A known social media account associated with the Proud Boys made "Stand back and stand by" its new slogan, and Proud Boys leader Joe Biggs likewise posted that he was "standing by."⁹³

Mr. Trump also made statements and used social media to pander to Q'Anon, a conspiracy movement, including by retweeting messages from Q'Anon followers on Twitter hundreds of times before his account was suspended.⁹⁴ When pressed on his views on Q'Anon, Mr. Trump appeared to defend the movement. On August 19th, Mr. Trump tacitly endorsed Q'Anon at a press conference, saying, "I don't know much about the movement, other than I understand they like me very much. Which I appreciate."⁹⁵ In a town

hall on October 15th, Mr. Trump praised Q'Anon members again, this time saying, "Let me just—let me just tell you, what I do hear about it, is they are very strongly against pedophilia. And I agree with that. I mean, I do agree with that. And I agree with it very strongly."⁹⁶

e. Mr. Trump Organized the January 6th "Save America" Rally

In the days leading up to January 6th, Mr. Trump sent out numerous tweets promoting the "Save America Rally" and gave his supporters specific instructions on when and where to attend. On December 19th, he tweeted, "*Big protest in D.C. on January 6th . . . Be there, will be wild!*"⁹⁷ On December 27, he tweeted "*See you in Washington, DC, on January 6th. Don't miss it. Information to follow.*"⁹⁸ On January 1, 2021, he tweeted, "*The BIG Protest Rally in Washington, D.C. will take place at 11:00 A.M. on January 6th. Locational details to follow. StopTheSteal!*"⁹⁹ The day before, he posted, "*I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early—doors open at 7AM Eastern. BIG CROWDS!*"¹⁰⁰

Mr. Trump not only knew, but actively coordinated the January 6th rally in order to disrupt the congressional proceedings that day. First, Mr. Trump chose to convene a rally on the same day as the electoral certification, and then explicitly urged his supporters to attend what he predicted would be a "wild" and "historic" day. Manager Plaskett underscored that it was only after Mr. Trump chose that day that the Pro-Trump group, Women for America First, obtained a permit for what became the "Save America" rally at the Ellipse.¹⁰¹ The day after Women for America First announced the rally, Mr. Trump reposted their invitation and replied "I will be there Historic day!"¹⁰² Manager Plaskett stated that the Trump campaign even "became directly involved with the planning of the event, including the speaking line-up and even the music to be played and brought in the same people who spoke at the second Million MAGA rally to help."¹⁰³ Notably, Vice President Pence's sister-in-law is on the advisory board of Women for Trump, which has ties to Women for America First—thus blurring the lines between the Trump administration and the organizers of the January 6th rally.¹⁰⁴

Manager Plaskett also emphasized that Mr. Trump's top advisors and the Trump communications team were actively monitoring posts from mainstream websites such as Twitter and Facebook, as well as pro-Trump message boards on Reddit and 4Chan.¹⁰⁵ Posters wrote about preparations for the rally in Washington, D.C. to take their election back, by violent means if necessary, on these message boards. His supporters posted hundreds of messages outlining their plans for January 6th. They discussed how to physically breach the Capitol grounds, which individuals to target once inside, and which weapons and tactical gear to take with them.¹⁰⁶

In this section, I outlined Mr. Trump's words and actions leading up to the attack on the Capitol. I will now move onto examining whether Mr. Trump foreseeably or recklessly persuaded his supporters into believing his voter fraud lies and taking action at his behest to prevent what he considered a stolen election.

C. Mr. Trump Foreseeably and Recklessly Persuaded His Supporters That the Election Was Stolen

Mr. Trump spread lies, conspiracy theories, and incendiary rhetoric before and after the 2020 election. He did so with the understanding that it would inflame his supporters and enlist their aid in helping him disrupt the electoral process. The effect was

to foreseeably and recklessly goad his supporters into action. We know this because there is evidence that his supporters were buying into his delegitimizing the election, his encouragement of taking action to overturn the electoral process, and his support for violent tactics.

Mr. Trump's promotion of themes such as "Stop the Count" and "Stop the Steal" served to gin up his supporters. Manager Swalwell pointed out that Mr. Trump spent "millions of dollars to amplify that lie . . . [I]n mid-December, President Trump announced the release of ads, including ones entitled 'The Evidence is Overwhelming—FRAUD!' and 'STOP THE STEAL.' He spent \$50 million from his legal defense fund on these ads to stop the steal and amplify his message. They were released nationally, played in video ads, online advertising, and targeted text messages."¹⁰⁷

His supporters took these ideas literally—angrily converging upon vote centers on November 5th to protest the continued counting of ballots after Election Day.¹⁰⁸ Trump supporters formed "Stop the Steal" online groups, which became a hotbed for sharing false claims and misleading videos about voter fraud. In November and December, his supporters held "Stop the Steal" rallies around the country. It was widely publicized that, at some of these events, participants were armed and belligerent. Notably, on December 12th, they staged the Second Million MAGA March in Washington, D.C., which resulted in violent clashes between Proud Boy members and counter protesters.¹⁰⁹ Mr. Trump promoted these rallies on his social media, and, in some instances, heaped praise on his supporters for fighting.¹¹⁰

The evidence showed that Mr. Trump's promotion of the "Save America" rally succeeded in convincing his supporters to show up at the time and place he named on January 6th. Many of Mr. Trump's supporters said that they felt summoned to Washington, D.C. to take retaliatory action. In a Parler post before the insurrection, a supporter shared one of Mr. Trump's tweets and wrote, "This isn't a joke, this is where and when we make our stand. #January6th, Washington DC. Be there, no matter what. Nothing is more important."¹¹¹ In a statement taped on a livestream video taken during the insurrection, a man is heard saying, "Our president wants us here We wait and take orders from our president."¹¹² In court papers and interviews given after the insurrection, pro-Trump rioters said they joined the march because the president encouraged them to do so.¹¹³

I find overwhelmingly clear and convincing evidence that Mr. Trump and his allies foreseeably and recklessly solicited his supporters to help him overturn the election results—including most prominently by attending the January 6th rally to disrupt the Electoral College certification.

D. Mr. Trump's Supporters Committed Unlawful Acts of Insurrection on January 6th

a. Trump Speaks at the "Save America" Rally

After months of fomenting anger over his false claims of election fraud, Mr. Trump gathered his supporters at the "Save America" rally on January 6th. Once there, Mr. Trump told the crowd "We're going to walk down to the Capitol because you'll never take back our country with weakness. You have to show strength and you have to be strong."¹¹⁴ This was a continuation of a pattern of violent rhetoric by Mr. Trump leading up to the events at the Capitol. For example, Mr. Trump had previously told followers to "Fight like Hell" at rallies. He repeated this language at the rally at noon on January 6th stating, "[W]e fight. We fight like hell."¹¹⁵ His supporters got the message.

By 12:53pm, a large group of Trump supporters approached a fenced off area in front of the Capitol and began to engage with Capitol police officers, many of whom were armed only with mace and their side arms.¹¹⁶

b. The Insurrection Begins

The crowd pushed past the barricade, knocking down police officers in the process, in an attempt to get closer to the building. Within minutes, protestors began swarming other entrances of the Capitol.¹¹⁷ Inside the Capitol, Vice President Pence presided over the joint session of Congress. Contrary to the wishes of Mr. Trump, Vice President Pence began the process of certifying the election results. Outside the Capitol, the crowd of protestors grew more violent. "Rioters wearing Trump paraphernalia shoved and punched Capitol Police officers, gouged their eyes, assaulted them with pepper spray and projectiles, and denounced them as 'cowards' and 'traitors.'"¹¹⁸ Law enforcement officers were attacked with baseball bats, crutches, hockey sticks, flag poles, and fire extinguishers.¹¹⁹ Some rioters came armed with handguns, pepper spray, knives, and brass knuckles.¹²⁰ Congressional staff and reporters were warned to stay away from windows and doors.¹²¹

c. Rioters Storm the Capitol

Between 2pm and 2:30pm, rioters broke through multiple entrances and began pushing deeper into the Capitol, flooding the Rotunda, Crypt, Statuary Hall, and other locations.¹²² Videos captured by rioters show the crowd, many in Trump paraphernalia, chanting "Stop the Steal" and "U.S.A." as they breached the Capitol and overpowered security.¹²³

Meanwhile, the Joint Session had separated into different chambers. The Senate was in the midst of a debate regarding an objection to certifying Arizona's Electoral College votes.¹²⁴ Secret Service rushed Vice President Pence out of the Senate chambers and took him and members of his family to a secure location within the Capitol.¹²⁵ Capitol Police officer Eugene Goodman led rioters away from the entrance to the Senate chambers, narrowly avoiding a potentially deadly encounter between Members of the Senate and rioters.¹²⁶ Senators were then evacuated from the Chamber.¹²⁷

On the other side of the Capitol, the House went into recess and members were told to lock down and shelter in place.¹²⁸ By 2:45 pm, members of the Capitol Security Team were forced to barricade the doors to the Chamber as insurrectionists attempted to break in. House Members were instructed to put on gas masks and some attempted to build makeshift shelters in case the mob broke through the doors.¹²⁹ Members who were on the ground level were evacuated through the Speaker's Lobby as Capitol Security guarded the door with guns.¹³⁰ Ashli Babbitt, an Air Force veteran, was fatally shot as she and others tried to break through the barricaded glass door.¹³¹ Members, reporters, and staff in the Gallery remained trapped one floor above the rioters. Videos taken during the events on January 6th show this group sitting and lying down in the aisles in an attempt to shelter behind the chairs.¹³² One particularly moving photo shows Representative Jason Crow (D-CO), a former Army Ranger, comforting Representative Susan Wild (D-PA) as the pair sheltered in the Gallery.¹³³ Rep. Crow recounted that he was doing what any friend would do, telling Rep. Wild "that I was there for her, and that we would get through it."¹³⁴ Another video shows Rep. Lisa Blunt Rochester (D-DE) praying loudly in the Gallery for safety and peace as she and other lawmakers, including Rep. Pramila Jayapal (D-WA), watched Capitol Police officers barricade the door to the Chamber.¹³⁵

d. The Rioters Target Vice President Pence and Speaker Pelosi

As members of Congress moved to secure locations or sheltered in place, rioters walked the halls carrying Confederate flags, vandalizing the building, and breaking into congressional offices, including the office of Speaker of the House Nancy Pelosi.¹³⁶ One rioter said that he and other rioters “kicked in Nancy Pelosi’s office door” and that “Crazy Nancy probably would have been torn into little pieces but she was nowhere to be seen.”¹³⁷ The use of the term “Crazy Nancy” is significant, for this is Mr. Trump’s nickname for the Speaker of the House. Vice President Mike Pence was another primary target for the most violent sections of the mob. “Once we found out Pence turned on us and that they had stolen the election, like, officially, the crowd went crazy,” said one rioter.¹³⁸ Rioters called for Pence’s death.¹³⁹ Throughout the Capitol, Members and their staff barricaded themselves in offices, hid under tables, called loved ones, and prayed for safety.¹⁴⁰

e. The President Fails to Respond to or Condemn the Violence at the Capitol

President’s Counsel argue that the President did not intend or anticipate for violence to take place. If that were the case, one would expect that—as soon as it was clear that the rioters had begun engaging in unlawful or violent acts—Mr. Trump would quickly and clearly condemn these actions and take every action possible to stop further violence. Arguably, once the lawbreaking began, it was only Mr. Trump that had the most potent power at that point to get his supporters to stop. However, instead of acting expeditiously, it took him more than two hours after the rioters stormed the Capitol to make a statement. In this time, it is reported that lawmakers and Trump advisors pleaded with him to call off the angry mob and denounce the violence.¹⁴¹ Mr. Trump was seemingly unmoved by these pleas for help, and it is even reported that he was pleased by the actions of his supporters.¹⁴² Rather than call off his supporters, it is reported that Mr. Trump called a Member of the Senate asking him to raise additional objections to certifying the Electoral College results.¹⁴³ Not until 4:15pm did Mr. Trump release a pre-recorded message, telling supporters to go home. The video statement did not condemn the rioters’ actions at the Capitol.

Mr. Trump’s delay in responding to the insurrection is unsurprising, for many of the rioters thought they were “answer[ing] the call of my President.”¹⁴⁴ In a livestreamed video from inside the Capitol, one rioter declared that “[o]ur president wants us here. . . . We wait and take orders from our president.”¹⁴⁵ Another rioter claimed that she “thought I was following my President. He asked us to fly there, he asked us to be there, so I was doing what he asked us to do.”¹⁴⁶ One supporter, who was later arrested for his actions on January 6th, stated through his lawyer that he, “acted out of the delusional belief that he was a ‘patriot’ protecting his country . . . He was responding to the entreaties of the-then commander in chief, President Trump. . . . The President maintained that the election had been stolen and it was the duty of loyal citizens to ‘stop the steal.’”¹⁴⁷ To paraphrase the House Managers, Mr. Trump sold his followers the big lie of a stolen election and then provoked those followers to violent action to “stop the steal.”

In his late statement on the events at the Capitol, Trump urged his followers to “Please support our Capitol Police and law enforcement stay peaceful.” Of course, the insurrection was never peaceful, and the

Capitol Police were treated cruelly by the mob. Over the course of the insurrection, 140 police officers were injured and one officer, Brian Sicknick, was killed. Four rioters also died. Congressional Leadership offices were trashed, the walls of the Capitol bore the marks of bullets, monuments were destroyed, windows were smashed and broken in, Members and staff were terrorized, Senate desks were ransacked, and smoke hung in the air. Mr. Trump should have pleaded with the crowd to stand down and leave the Capitol as soon as the insurrection began. The fact that he waited to address the rioters, and downplayed the severity of the insurrection to the point of even praising the patriotism of the rioters, was not just dereliction of duty. It was malicious disregard for the lives of Capitol Police, Members of Congress, staff, and Capitol workers threatened by the mob that he incited.

f. The Capitol is Cleared and the Election Results are Certified

It took more than four hours after the rioters first entered the building to secure the Capitol and another three hours before the Joint Session could resume.¹⁴⁸ Nevertheless, Joseph R. Biden Jr. was confirmed the winner of the 2020 election at approximately 4am.¹⁴⁹ Democracy prevailed.

E. The First Amendment Is Not a Defense to Mr. Trump’s Incitement of Insurrection

President’s Counsel argued at trial that Mr. Trump was exercising his First Amendment rights in expressing his views at the “Save America” rally, and thus cannot be convicted in this proceeding. I conclude that there is overwhelmingly clear and convincing evidence that the First Amendment does not inculcate him from the current Impeachment charge.

a. The First Amendment Is Not a Bar to Impeachment

As I explained in Section II, the relevant standard in an Impeachment trial is whether a president committed impeachable “high Crimes and Misdemeanors.” An impeachable offense need not violate a criminal or other established law. Indeed, even an action that is lawful or otherwise protected by the Constitution can still be an impeachable offense. Rather the appropriate standard in this proceeding is whether an offense is “incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.”¹⁵⁰ In addition, as I explained in Section IV, there is no defined standard of proof in an Impeachment, and there are no requirements to adhere to the same standards as in a criminal prosecution.

As a result, in an Impeachment trial, the Senate is simply not bound by a determination of whether Mr. Trump is protected by the First Amendment, nor must the Senate demand a showing that every element of a criminal charge of incitement has been met.

b. Mr. Trump’s Speech Likely Satisfies the Standard of Incitement

Although I have concluded that the First Amendment does not necessarily serve as a shield in this proceeding, I find it persuasive that the bedrock principle of free speech has a long history in our country. Therefore, I undertook an examination of the governing case precedent regarding incitement. I have concluded that, even if the First Amendment were to apply in this case, Mr. Trump’s overall course of conduct would satisfy the standard for incitement.

The First Amendment prohibits any law “abridging the freedom of speech.”¹⁵¹ However, even at our country’s founding, it is clear that the First Amendment was not intended to provide absolute protection for every utterance. Of the fourteen states that

ratified the Constitution by 1792, thirteen had laws limiting libelous or blasphemous speech.¹⁵² In addition, the Supreme Court has recognized specific categories of speech that are not protected by the First Amendment and which the government may regulate because of their content. These categories are “obscenity, defamation, fraud, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography.”¹⁵³

The relevant legal framework for incitement was established by the U.S. Supreme Court in the 1969 case of *Brandenburg v. Ohio*.¹⁵⁴ In that case, a Ku Klux Klan leader, Clarence Brandenburg, was convicted after making a speech at a Klan rally that apparently broke an Ohio law against “advocat[ing] crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform.”¹⁵⁵ The Supreme Court overturned Brandenburg’s conviction and struck down the statute on First Amendment grounds. In doing so, the Court articulated a new test for when advocating for violence or lawbreaking could be criminally prosecuted. The Brandenburg test defines unprotected incitement as speech that is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”¹⁵⁶

Subsequent cases further clarified the “imminence” standard set out in *Brandenburg*. In the Supreme Court case of *Hess v. Indiana*, Gregory Hess was attending an anti-Vietnam war protest when the police moved a group of protesters from the street onto the sidewalk.¹⁵⁷ Hess said, “We’ll take the [effing] street later” and was convicted for disorderly conduct.¹⁵⁸ The Supreme Court reversed Hess’ conviction, concluding, “Since the uncontroverted evidence showed that Hess’ statement was not directed to any person or group of persons, it cannot be said that he was advocating, in the normal sense, any action. And since there was no evidence, or rational inference from the import of the language, that his words were intended to produce, and likely to produce, imminent disorder, those words could not be punished by the State on the ground that they had ‘a tendency to lead to violence.’”¹⁵⁹

The Supreme Court subsequently explained that a finding of “imminence” also hinged upon the context and timing connecting speech and subsequent acts of lawbreaking. In *NAACP v. Claiborne Hardware Company*, a local branch of the National Association for the Advancement of Colored People (NAACP) organized a boycott of white-owned stores in Mississippi.¹⁶⁰ The boycott was largely supported by impassioned speeches encouraging nonviolent picketing—including by boycott organizer Charles Evers—but some acts and threats of violence did occur.¹⁶¹ The Court concluded, “There are three separate theories that might justify holding Evers liable . . . First, a finding that he authorized, directed, or ratified specific tortious activity would justify holding him responsible for the consequences of that activity. Second, a finding that his public speeches were likely to incite lawless action could justify holding him liable for unlawful conduct that in fact followed within a reasonable period. Third, the speeches might be taken as evidence that Evers gave other specific instructions to carry out violent acts or threats.”¹⁶² In the specific case of Evers’ speech, the Court concluded “In the course of [Evers’] pleas, strong language was used. If that language had been followed by acts of violence, a substantial question would be presented whether Evers could be held liable for the consequences of that unlawful conduct. In this case, however the acts of violence identified in 1966 occurred weeks or months after [his] April 1, 1966, speech.”¹⁶³

There is overwhelmingly clear and convincing evidence that Mr. Trump's overall course of conduct meets the spirit of the Brandenburg test. As laid out in the *Clai-borne* case, a finding of "imminence" should take into account the context and timing of Mr. Trump's January 6th rally speech. After months of fueling the narrative that the election was stolen from him, Mr. Trump asked his supporters to assemble on the day that Congress would be certifying the election results. Once Mr. Trump had gathered his supporters—knowing that they would listen—he directed the crowd to "walk down Pennsylvania Avenue," "fight like hell," and "stop the steal." Unlike the speech in *Clai-borne*, which was far removed in time, the lawlessness was imminent because it happened a short distance and short time after Mr. Trump's speech. Unlike the indefinite speech in *Hess*, Mr. Trump's speech was directed at a specific group of persons, and subsequent acts of violence are directly traceable to people who had listened to Mr. Trump's calls to action.

On the issue of Mr. Trump's intent, whether or not Mr. Trump specifically intended every act of violence, he set these events in motion. If Mr. Trump truly did not intend for lawbreaking, what did he expect his supporters would do once they reached the Capitol? How did he expect his supporters to lawfully achieve the aim of preventing electors from being counted? From this evidence, we can infer that Mr. Trump understood there was a high likelihood that his supporters would break the law once they got to the Capitol.

Further revealing his state of mind, Mr. Trump did not publicly disapprove of the insurrection as it was happening, or take concrete steps to clear the mob. The first public statement he made, once the mob had breached the Capitol, was to disparage Vice President Pence for failing to block the certification. Instead of acting expeditiously, it took him nearly two hours to acknowledge the attack. In his three statements that day, he repeated false claims that the election was stolen and sympathized with his followers. There are reports that he even called a sitting Senator to ask him to object to additional states, as the insurrection was taking place. In addition, there is no evidence that Mr. Trump tried to activate the National Guard, and even rebuffed requests to do so. The question becomes how did Mr. Trump expect these actions—criticizing the Vice President, urging additional electoral objections, and praising his supporters—to calm down tensions? How did he foresee that the overwhelmed Capitol police would be able to push back the mob without additional law enforcement assistance? From this evidence, we can infer that Mr. Trump was satisfied, or at least was not displeased, that his actions had inflamed his supporters to violently disrupt the electoral certification.

c. Mr. Trump's Speech Was Held to a Higher Standard as a Public Official

It is further important to note that Mr. Trump was not making statements in his capacity as a private citizen but as president of the United States. In the Supreme Court case, *Garcetti v. Ceballos*, the Court held that "when a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom."¹⁶⁴ In this case, the respondent was disciplined for a memorandum he wrote as part of his employment in a district attorney's office, and asserted that his supervisors violated his First Amendment rights.¹⁶⁵ The Court concluded "We hold that when public employees make statements pursuant to their official duties, the employ-

ees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."¹⁶⁶

In Mr. Trump's case, it would be difficult to argue that he gave a political speech at the "Save America" rally outside the course of performing his official duties. The purpose of the speech was to use his role as president to urge his supporters to stop the certification of Biden's electoral win. In addition, there is evidence that members of the crowd had taken Mr. Trump's invocations to attend the rally, and his insisting that they head to the Capitol, as instructions coming from the president.¹⁶⁷

Moreover, as Manager Raskin explained, a president takes an oath to uphold the laws, the Constitution, and the principles of our republic.¹⁶⁸ In exchange, the president is given tremendous power and prestige—more so than any other person in the country. That is why, in an instant, a president's words can calm, agitate, or otherwise change the landscape on issues ranging from foreign affairs, to the economy, to the rule of law. Not only can the president's words have an expansive ripple effect, they are more likely to succeed in inciting action from the public. These potent powers can be wielded by the president for the good of the country, or can be exploited to subject it to the gravest abuses. That is why—for the protection of our laws and democratic institutions—a president's primary obligation is to uphold their oath of office, and any freedom of expression must yield to that higher duty.

In this case, Mr. Trump did not have a First Amendment right to fuel a mass disinformation campaign, foreseeably fan the flames of political division, and then direct a mob to disrupt a congressional proceeding.

VII. OBSTRUCTION OF ELECTORAL COLLEGE

In inciting the insurrection on January 6th and attempting to overturn the 2020 election, Mr. Trump attempted to destroy our democratic system and negate the will of the American people.

The Electoral College process is laid out in the Twelfth Amendment of the Constitution, which states:

"The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least . . . they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted[.]"

Just as the Electoral College has been carried out and affirmed since the first presidential election of President George Washington,¹⁶⁹ the 2020 election took place according to the requirements of the Constitution. Voters in each respective state and territory chose their electors to serve in the Electoral College,¹⁷⁰ with Mr. Biden winning a majority of 306 electoral votes.¹⁷¹ On December 14, 2020, the appointed electors convened state-by-state to cast their ballots for the President and Vice President of the United States, and certified the results.¹⁷² On January 6th to 7th of 2020, Congress counted the certified votes, and declared Mr. Biden and Kamala Harris the winners.¹⁷³

Throughout the Electoral College process, Mr. Trump attempted to interfere and nullify the outcome. For example, as discussed in Section VII, Mr. Trump was at the head of a mass disinformation campaign to discredit

the election results before the election had even gotten underway, and then filed dozens of lawsuits alleging widespread voter fraud.¹⁷⁴ In addition, as I will outline, he wielded his overwhelming power as president to cajole and intimidate members of federal, state, and local government to start investigations, file lawsuits, and reject electoral votes in a bid to overturn the 2020 election.

A. Mr. Trump Attempted to Use Federal Law Enforcement Agencies to Carry Out Investigations and File Lawsuits

After losing the 2020 election, Mr. Trump pushed the Justice Department to investigate his meritless allegations of election irregularities.¹⁷⁵ He also pushed the Justice Department to ask the Supreme Court to invalidate Mr. Biden's victory, which his appointees refused to do, citing the lack of evidence.¹⁷⁶ Mr. Trump even disparaged his own FBI and DOJ, implying that they were working against him. In an interview, Mr. Trump said, "This is total fraud. And how the F.B.I. and Department of Justice—I don't know, maybe they're involved—but how people are allowed to get away with this stuff is unbelievable. This election was a total fraud . . . Missing in action . . . Can't tell you where they are."¹⁷⁷

Succumbing to this pressure, Attorney General William Barr issued a memorandum to U.S. attorneys across the country allowing them to pursue any "substantial allegations" of voting irregularities before the 2020 presidential election was certified.¹⁷⁸ The memorandum gave prosecutors the ability to sidestep longstanding Justice Department policy of not taking overt steps on possible election fraud before results are certified. In response, career DOJ prosecutors called on Mr. Barr to rescind the memo, because it was not based on fact and there was no evidence of widespread voter fraud.¹⁷⁹

After Mr. Barr stepped down as Attorney General, Mr. Trump then reportedly pressured Barr's successor, Acting Attorney General Jeffrey Rosen, to file legal briefs seeking to overturn his election loss.¹⁸⁰ He wanted Mr. Rosen to appoint special counsels, including a counsel who would look into Dominion Voting Systems—which is at the center of a right-wing conspiracy theory accusing the company of conspiring with the Venezuelan government to tip the election toward Mr. Biden. Mr. Rosen refused the president's entreaties. Mr. Trump then plotted with Jeffrey Clark, a Trump loyalist and the head of the DOJ's civil division, to oust Mr. Rosen as acting attorney general, and replace him with Mr. Clark, who was willing to do Mr. Trump's bidding in trying to overturn the Georgia election results. This plan was only unsuccessful because Mr. Trump's advisors convinced him the move could potentially lead to mass resignations within DOJ's leadership and lead to congressional investigations.¹⁸¹

B. Mr. Trump Exerted Inappropriate Pressure on State Elected Officials

Article II, Section 1, Clause 2 provides that each state shall appoint electors "in such Manner as the Legislature thereof may direct."¹⁸² However, the decisions on how and when to choose electors is left up to the states. The Electoral Count Act only requires that states be required to certify their elections at least six days before the electors meet to vote.¹⁸³ After his loss on Election Day, Mr. Trump sought to exploit the ambiguous language of the Electoral Count Act that gives states discretion in choosing electors. Most state laws require the appointment of electors who vote according to the outcome of the popular vote in each state.¹⁸⁴

However, Mr. Trump sought to use the weight of his office to persuade and, in some

cases, intimidate state officials. For example, he invited GOP members of the Michigan state legislature to the White House, in a brazen bid to get them to throw out the state's election results.¹⁸⁵ He also called two members of the Wayne County Board of Canvassers, including its Republican chairwoman, who had already voted to certify that Joe Biden won their county.¹⁸⁶ Within 24 hours of the call, the Republican chairwoman announced that she wanted to "re-scind" her vote.¹⁸⁷ Her reasoning mirrored Mr. Trump's claims that the election may have been rife with fraud. In another instance, he called the speaker of the Pennsylvania House of Representatives, Bryan Cutler, and inquired about the electoral process. According to Cutler's spokesperson, Mr. Trump blatantly asked, "I'm hearing about all these issues in Philadelphia, and these issues with your law What can we do to fix it?"¹⁸⁸

Mr. Trump's effort hit its crescendo when the Trump campaign convinced supporters in several states to create an alternate slate of electors to send for the congressional certification.¹⁸⁹ The Trump campaign helped organize alternate Electoral College meetings in Wisconsin, Arizona, Pennsylvania, Georgia, New Mexico, and Nevada.¹⁹⁰ However, election law experts dismissed the validity of these false electors, which had "neither been certified by state executives nor purportedly appointed by state legislators."¹⁹¹

Mr. Trump also took extra effort to influence the outcome of the Georgia election, a fierce battleground state. In early December, he called Governor Brian Kemp and asked him to hold a special session of the Georgia legislature to appoint Trump electors to reverse Mr. Biden's win. Mr. Trump also wanted Kemp to order an audit of absentee ballot signatures. When Kemp told the former president he would not be complying with either demand, Mr. Trump told a crowd of supporters at a Georgia rally that, "Your governor could stop it very easily if he knew what the hell he was doing . . . So far we haven't been able to find the people in Georgia willing to do the right thing."¹⁹²

In the most extraordinary example of his inappropriate interactions with state lawmakers, Mr. Trump outright tried to coerce Georgia Secretary of State Brad Raffensperger, "to find" 11,780 votes—which would amount to the one vote margin he needed to win the state.¹⁹³ Mr. Trump spent roughly an hour haranguing Raffensperger and Ryan Germany, the Georgia secretary of state's general counsel, about doing another vote count and insisting on baseless conspiracy theories. Even when presented with facts to the contrary by Raffensperger and Germany, who are both Republicans, Mr. Trump did not relent.

Mr. Trump also made veiled threats of how his supporters would punish Republicans if the Georgia election officials did not go along with what he was asking. Specifically, he told Raffensperger, who will be up for reelection in 2022, "[T]hey hate the state, they hate the governor, and they hate the secretary of state. I will tell you that right now. And the only people that like you are people that will never vote for you. You know that, Brad, right?"¹⁹⁴

Mr. Trump even suggested that Raffensperger and Germany would face criminal consequences if they refused to intervene, saying "[T]he ballots are corrupt. And you're going to find that they are—which is totally illegal, it is more illegal for you than it is for them because, you know what they did and you're not reporting it. That's a criminal—that's a criminal offense. And you can't let that happen. That's a big risk to you and to Ryan, your lawyer."¹⁹⁵

In the end, Mr. Trump made so many false claims about the Georgia election, a top

state official had to publicly debunk the claims one-by-one to restore public trust in the integrity of their election.¹⁹⁶

C. Mr. Trump Lobbied Vice President Pence to Reject Electoral Votes

Vice President Pence presided over the January 6th certification of electoral votes. This role is spelled out by Article II, Section 1 of the Constitution, which dictates that "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."¹⁹⁷ In conducting this duty, the Vice President has no more power than to determine whether the certificates submitted by each state are authentic and then to count the votes.¹⁹⁸

In the days leading up to and on January 6th, Mr. Trump denied the constitutional reality of the Vice President's role and made it clear that he wanted Vice President Pence to block electoral votes for Mr. Biden. At his behest, a group of Republican lawmakers filed a lawsuit against Vice President Pence. The lawsuit alleged that the Twelfth Amendment gave the Vice President, and not states, unilateral power to determine which among competing slates of electors may be counted.¹⁹⁹ Mr. Trump's own Justice Department stepped in to defend Mr. Pence, and a federal judge tossed out the lawsuit after finding that the Republican lawmakers lacked standing to sue in this case.²⁰⁰

Still, Mr. Trump unabashedly and repeatedly tried to coerce Vice President Pence into unilaterally rejecting the election results. On January 2nd, he falsely proclaimed over Twitter that, "The Vice President has the power to reject fraudulently chosen electors."²⁰¹ Two days later, Mr. Trump said at a rally in Georgia that, "I hope Mike Pence comes through for us, I have to tell you . . . Of course, if he doesn't come through, I won't like him as much."²⁰² Trump reportedly met with and called Pence multiple times—plying him to object to Biden's victory, including at least one time with threatening language.²⁰³ Trump reportedly solicited others in his orbit to put pressure on the Vice President, including Rudy Giuliani and trade adviser Peter Navarro.²⁰⁴ Despite the enormous pressure, Mr. Pence told Mr. Trump that he planned to certify the election results for Mr. Biden.²⁰⁵

In response, Mr. Trump tweeted on the morning of January 6th that, "*All Mike Pence has to do is send [the votes] back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!*"²⁰⁶ He also tweeted "If Vice President @Mike—Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!"²⁰⁷ In his remarks at the "Save America" rally itself, Mr. Trump said, "I hope Mike is going to do the right thing. I hope so. I hope so. Because if Mike Pence does the right thing, we win the election. . . . And I actually—I just spoke to Mike. I said: 'Mike, that doesn't take courage. What takes courage is to do nothing. That takes courage.'"²⁰⁸

Once the electoral vote count had begun, it was clear that Vice President Pence was not going to comply with his demands. Mr. Trump attacked him on Twitter writing, "*Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!*"²⁰⁹

D. Mr. Trump Encouraged Members of Congress to Deny and Overturn the Election Results

Once it was clear that Mr. Trump had no plans of conceding, even after Mr. Biden had

been declared the presumptive winner, Republicans were faced with a choice. Manager Lieu explained that Mr. Trump targeted Members of Congress on social media making it clear he saw their siding with him as a loyalty test. Mr. Trump reminded Republicans that he, in his view, had gotten them elected and he expected their gratitude.²¹⁰ Under these threats of retribution, Mr. Trump was successful in getting Republicans to line up with him—in either refusing to acknowledge that Mr. Biden had won or worse, enabling his baseless claims of a rigged election.²¹¹

In early December, Mr. Trump also identified an ally in the House of Representatives who was circulating a Dear Colleague letter asking Republican members to sign onto an amicus brief supporting a lawsuit filed by the Texas Republican Attorney General in the Supreme Court to void the election results of other states.²¹² Mr. Trump began to personally lobby House Republicans asking them to sign the amicus brief.²¹³ In the end, one hundred and twenty six Republican members of Congress signed on, including the House Minority Leader.²¹⁴ The U.S. Supreme Court rejected the lawsuit saying the state of Texas lacked standing to pursue the case.²¹⁵

As an extension of Mr. Trump's pressure campaign, Republican Members of Congress began to similarly view the certification of the Electoral College as a loyalty test to Mr. Trump. A few days before January 6th, eleven current and then-incoming Republican senators announced that they would vote to reject the Electoral College votes of some states as not "lawfully certified," unless Congress appointed a commission to conduct an emergency, ten day audit of the election results.²¹⁶ One hundred and forty Republican Members of the House planned a similar effort.²¹⁷ Together, the Senate and House Members planned to object to the counting of electors from Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.²¹⁸

The question is not whether these Members had the legal right to object to electors but whether there were facts to support the objections. At that point, the results of the election and lack of substantive voting irregularities was affirmed by dozens of judges, the U.S. Supreme Court, governors, and election officials.²¹⁹ In addition, Department of Homeland Security officials put out a statement that said, "The November 3rd election was the most secure in American history."²²⁰ Attorney General Barr put out a similar statement that said, "[We] have not seen fraud on a scale that could have effected a different outcome in the election."²²¹ In the face of all this evidence, the subsequent objections could be seen as little more than a ploy to lend specious legitimacy to Mr. Trump's allegations of voter fraud and avoid provoking Mr. Trump's ire.

E. Mr. Trump Sought to Block the Peaceful Transfer of Power

Mr. Trump's overall course of conduct embodied the exact kind of behavior that the Framers built constitutional protections to thwart. The Framers knew that an executive who amassed too much power might replicate the abuses of a monarchy. At the Constitutional Convention, James Madison explained the risks of appointing an executive—saying "loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic."²²² An exchange between two delegates, William Richardson Davie and James Wilson, highlights the importance of safeguarding against a corrupt president that would cheat to get reelected. Davie stated, "[i]f he be not impeachable whilst in office, he will spare no efforts or means

whatever to get himself reelected.' [Davie] considered this as an essential security for the good behaviour of the Executive."²²³ Wilson concurred with Davie "in the necessity of making the Executive impeachable while in office."²²⁴

Without mechanisms to keep an out-of-control president in check, there was little binding him to the law. This, in part, prompted the Framers to design the system of checks and balances and Congress's Impeachment power. Another intentional hallmark of our democracy is the peaceful transfer of power, which is especially important when an incumbent loses re-election.²²⁵ This assures that an executive acquires and maintains power only through lawful means. It also ensures that power is given to a president, and taken back, according to the will of people. It began when President John Adams—defeated by his bitter political rival Thomas Jefferson—quietly left the White House on the morning of the new president's inauguration.²²⁶ Since then, no president has ever refused to accept an election result or defied the lawful processes for resolving electoral disputes, until Mr. Trump.

Mr. Trump, unable to accept the will of the people, categorically rejected the decision of Americans as expressed in the 2020 election. Even more than refusing, he repeatedly sought to undermine processes at the federal, state, and local level that would advance a peaceful transfer of power. As the House Managers noted, Mr. Trump tried to obstruct the election process through non-violent means.²²⁷ When these attempts failed, he directed a mob to help him wrest power by launching an attack on the legislative branch.

IX. VIOLATION OF SEPARATION OF POWERS

One of the key principles rooted in our democratic system is the separation of powers between the co-equal branches of government. This is apparent from the way the Framers devised a system of federal government that diffuses and divides its core functions across the legislative, executive, and judicial branches.

The doctrine is rooted in a political philosophy that aims to keep the government, as a whole and each branch, both limited and empowered, so that the government can function effectively, while the branches can prevent one another from acting arbitrarily or recklessly. As James Madison explained in *Federalist Paper Number 47*, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny."²²⁸

Therefore, when any one branch of government seeks to obstruct an essential function of another branch, it threatens the separation of powers.²²⁹ In a case where a president seeks to derogate the authority of another branch, it can also undermine the president's constitutional obligation to "take Care that the Laws be faithfully executed."²³⁰

In inciting the armed assault on the Capitol on January 6th, Mr. Trump knowingly and recklessly threatened a constitutional proceeding of the Congress. In all this, Mr. Trump gravely endangered the security of the United States and its institutions, and imperiled a coequal branch of government.

X. VIOLATION OF OATH OF OFFICE

Manager Castro outlined the numerous ways that Mr. Trump abandoned his post as the insurrection began, and even hours after it was underway.²³¹ Capitol Police were overwhelmed and violently assaulted by the armed mob. Members of Congress and congressional staff feared for their lives, many of them hiding or barricaded in offices, as the mob wreaked mayhem on the Capitol

grounds. It was all unfolding on television, leaving little doubt that Mr. Trump saw it happening in real time.

Manager Castro emphasized that Mr. Trump could have simply told the rioters to stop and leave the Capitol.²³² As I explained in Section VII, Mr. Trump did not acknowledge the attack for nearly two hours, while Republican lawmakers and the people closest to him implored him to call off the attack. Instead, he tweeted out criticism of Vice President Pence. When he finally acknowledged the attack, he did not denounce the mob or rioters, but asked them to "stay peaceful," even though it was clear that they had undertaken an unlawful siege at the Capitol. At this time, Mr. Trump still did not ask the rioters to stop. Three and half hours in, he released a video reaffirming the same voter fraud lies, and told his supporters, "We love you. You're very special." While Mr. Trump did tell the rioters to go home this time, he still refused to disavow the ongoing attack or the attackers themselves.

In addition to inciting the insurrection, Mr. Trump abandoned his duties to defend the American people, even after the events of the day turned deadly. Manager Castro noted that he did not deploy the National Guard, nor any other law enforcement.²³³ He was so disengaged from discussions with the Pentagon about deploying the National Guard that Vice President Pence had to intervene to help move the request forward.²³⁴

Taken together, Mr. Trump's conduct was an astonishing and wilful dereliction of duty. He had sworn an oath to "faithfully execute the office of President of the United States and preserve, protect and defend the Constitution of the United States."²³⁵ Yet on that day, he commanded his supporters to inflict grave harm to the constitutional order, by telling them to disrupt the electoral certification and the peaceful transfer of power. He sat back and watched as his supporters took part in an attack on the government institutions that he swore to defend. Then, he entirely failed to stop or condemn the widespread lawbreaking that his supporters took part in. As such, I find that there is overwhelmingly clear and convincing evidence that Mr. Trump violated his oath of office.

XI. CONCLUSION: CONVICTION AND DISQUALIFICATION OF MR. TRUMP IS AN APPROPRIATE REMEDY

Conviction and disqualification of a president from office requires a high standard and should only be arrived at when there are no other remedies available.

First, I would refute several assertions by President's Counsel that the Impeachment proceeding, and the remedies thereof, are not the appropriate way to hold Mr. Trump accountable for his actions. President's Counsel and the Senate Minority Leader argue that the more proper forum is a criminal proceeding because of the criminal implications of his offenses. Taken to its logical extreme, their views would absurdly mean that if a president's malfeasance could be prosecuted, the president should be protected from the Impeachment process.

In addition, Manager Raskin correctly differentiated the purpose and independence of the Impeachment process from the prosecution of crimes. As Manager Raskin stated, "[Impeachment] was created to prevent and deter elected officials who swear an oath to represent America but then commit dangerous offenses against our republic."²³⁶ An Impeachment, unlike a criminal case, is not meant to punish the defendant, but to guard the country and the Constitution from an unfit executive. As I have explained, by his conduct, Mr. Trump violated his oath of of-

fice and refused to defend the Constitution itself. Therefore, an Impeachment is the most appropriate forum to protect the integrity of the presidency and the constitutional order.

President's Counsel also contend that Impeachment is unnecessary in this case because the 2020 election was the remedy for his conduct. Of course, when Mr. Trump incited a mob to violent action at the U.S. Capitol, it was an attempt to delay the certification of the election results. This followed months of Mr. Trump's public refusal to concede the election on the grounds that it was stolen from him. Clearly, the election process is insufficient in this case because Mr. Trump does not recognize the validity of any election outcome that does not favor him.

Failing to convict the former president would result in several constitutional perils. First, Mr. Trump may once again run for president. If re-elected, there is no reason to believe that he would feel constrained by any limitations. An acquittal essentially would provide him permission to commit the same abuses or worse, without fear of accountability. That includes leveraging all the powers of the presidency to stay in power or wage an assault on a coequal branch of government. Presidents must be held accountable when their lust for power does violence to bedrock principles. Disqualification from public office is the only remedy left to prevent such behavior from Mr. Trump in the future.

A failure to convict would also be a lesson to future presidents with authoritarian tendencies that they can attack our democratic principles and institutions without consequence. Even beyond a "January Exception," a future president might reason that otherwise impeachable conduct will not be challenged during any part of their presidency. In addition to rank abuse of power, a future president may not submit to the peaceful transfer of power and the sacred will of the people. In terms of the legislative branch, Congress would send a message that it is unwilling to use its own oversight powers functionally and effectively, and is unwilling to uphold a meaningful separation of powers. Disqualification is the necessary method for protecting the republic from such democratic decay within the executive and legislative branches.

This chapter in history reminds us that democracy is fragile and we must diligently safeguard its principles. To this end, I have a responsibility to defend the truth, the rule of law, and our democratic institutions. I am compelled to vote to convict President Donald J. Trump of committing "high Crimes and Misdemeanors" and support his disqualification from ever again holding an office of public trust.

ENDNOTES

1. Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors, H.R. Res. 24, 117th Cong. (2021).
2. U.S. Const. art. I, §3, cl. 6.
3. U.S. Const. art. II, §4.
4. U.S. Const. art III, §3, cl. 1.
5. Staff of H. Comm. on the Judiciary, 116th Cong., Rep. on Constitutional Grounds for Presidential Impeachment 14 (Comm. Print 2019).
6. 2 Sir William Blackstone, Commentaries on the Laws of England 2152 (William Carey Jones ed., 1976).
7. *Id.* at 2153.
8. Charles Doyle, Cong. Research Serv., 98-882, Impeachment Grounds: A Collection of Selected Materials 4 (1998).
9. The Federalist Paper No. 65, at 439 (James Madison) (Jacob E. Cooke ed., 1961)

10. 2 The Records of the Federal Convention of 1787 550 (Max Farrand ed., 1911).
11. *Ibid.*
12. 4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution 113 (Jonathon Elliot ed., 2nd ed. 1861).
13. Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* 21 (3rd ed. The University of Chicago Press 2019) (1996).
14. 2 Joseph Story, Commentaries on the Constitutions 799 at 269–70 quoting William Rawle, *A View of the Constitution of the United States* at 213 (2d ed. 1829).
15. Staff of H. Comm. on the Judiciary, 93rd Cong., Rep. on Constitutional Grounds for Presidential Impeachment 27 (Comm. Print 1974).
16. 2 The Records of the Federal Convention of 1787, *supra* note 10, at 64–65.
17. *Id.* at 550
18. *Ibid.*
19. *Ibid.*
20. *Ibid.*
21. *Id.* at 551.
22. *Id.* at 600.
23. U.S. Const. art. I, §3, cl. 7.
24. 1 The Collected Works of James Wilson 736 (Kermit L. Hall and Mark David Hall eds., 2007).
25. Memorandum from William Barr, Attorney General, Department of Justice, to Rod Rosenstein, Deputy Attorney General, Department of Justice, and Steve Engel, Assistant Attorney General, Department of Justice 12 (June 8, 2018) (on file with the New York Times) (emphasis in original).
26. 2 The Records of the Federal Convention of 1787, *supra* note 10, at 65–66.
27. Charles L. Black, Jr. & Philip Bobbit, *Impeachment: A Handbook*, New Edition 17 (2018).
28. The Federalist No. 65, *supra* note 9, at 441; Laurence Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment* 127 (2018).
29. The Federalist No. 65, *supra* note 9, at 441.
30. *Id.* at 442.
31. Black & Bobbitt, *supra* note 27.
32. *Ibid.* (Black's analysis is cited by several other scholars as persuasive; *See e.g.*, Laurence Tribe and Joshua Matz, *To End a Presidency: The Power of Impeachment* 137 (2018).
33. Bruce L. Castor Jr. et al, *Trump's Answer to Article of Impeachment*, (Feb. 2, 2021) at 1, <https://www.cnn.com/2021/02/02/politics/trump-response-impeachment-article/index.html>.
34. Castor Jr. et al, *supra* note 33, at 1–2.
35. Jamie Raskin et al, *Trial Memorandum of the United States House of Representatives I. the Impeachment Trial of President Donald J. Trump*, House Judiciary Com. 48 (Feb. 2, 2021), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=3515>.
36. Jared P. Cole & Todd Garvey, *Impeachment and the Constitution*, CRS (Nov. 20, 2019), <https://crsreports.congress.gov/product/pdf/R/R46013>.
37. The Federalist No. 65, *supra* note 9, at 397.
38. Raskin et al, *supra* note 35, at 51.
39. Brian C. Kalt & Frank Bowman, *Congress Can Impeach Trump Now and Convict Him When He's Gone*, Wash. Post (Jan 11, 2021), <https://www.washingtonpost.com/outlook/2021/01/11/trump-impeachment-senate-trial/>.
40. *Ibid.*
41. Brian C. Kalt, "The Constitutional Case for the Impeachability of Former Federal Officials: An Analysis of the Law, History, and Practice of Late Impeachment", 6 Texas Review of Law and Politics 13, 26 (2001).
42. Kalt, *supra* note 40, at 29.
43. Mark Aaronson et al, *Constitutional Law Scholars on Impeaching Former Officers*, Politico (January 21, 2021), at 2, <https://www.politico.com/t/?id=00000177-2646-de27-a5f7-3fe714ac0000>.
44. *Id.* at 1–92.
45. The Federalist No. 65, *supra* note 9, at 456.
46. Senate Historical Office, "The First Impeachment", United States Senate, <https://www.senate.gov/artandhistory/history/minute/The-First-Impeachment.htm>.
47. *Ibid.*
48. Kalt & Bowman, *supra* note 38.
49. *Ibid.*
50. Raskin et al, *supra* note 35, at 73–74.
51. Raskin et al, *supra* note 35, at 74.
52. Kalt & Bowman, *supra* note 38.
53. Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analyses* 80, (Henry Barton Dawson ed., U. of Chicago Press, 2000).
54. U.S. Const. art. I, §3, cl. 6.
55. The Federalist No. 65, *supra* note 9, at 441.
56. Siobhan Hughes, *McConnell Won't Convene Senate Early to Accept Impeachment Article*, Wall St. J. (Jan. 13, 2021), <https://www.wsj.com/livecoverage/trump-impeachment-house-biden-card/lqqlkwh7BOCRLaSGrkig>.
57. 167 Cong. Rec. S662 (daily ed. Feb. 11, 2021) (statement of Mr. Manager Lieu), <https://www.congress.gov/117/crc/2021/02/11/CREC-2021-02-11-pt1-PgS645-2.pdf>.
58. Kevin Collier, *Selfies, social media posts making it easier for FBI to track down Capitol riot suspects*, NBC (Jan. 16, 2021), <https://www.nbcnews.com/tech/social-media/selfies-social-media-posts-making-it-easier-fbi-track-down-n1254522>.
59. Bryce Klehm & Rohini Kurup, *Compiling the Criminal Charges Following the Capitol Riot*, Lawfare (Jan. 6, 2021), <https://www.lawfareblog.com/compiling-criminal-charges-following-capitol-riot>.
60. Salvador Rizzo, *Trump attorneys falsely claim he was denied due process*, Wash. Post (Feb. 13, 2021), <https://www.washingtonpost.com/politics/2021/02/13/trump-attorneys-falsely-claim-he-was-denied-due-process/>.
61. Jared P. Cole, *Terrorist Databases and the No Fly List: Procedural Due Process and Other Legal Issues*, CRS (July 27, 2016), https://www.crs.gov/Reports/R43730?source=search&guid=2a367adacc304370874da997e155d437&index=0#_Toc530390992.
62. *Incitement*, Black's Law Dictionary (10th ed. 2014).
63. *Ibid.*
64. Nicholas Fandos et al, *144 Constitutional Lawyers Call Trump's First Amendment Defense 'Legally Frivolous'*, N.Y. Times (Feb. 5, 2021), <https://www.nytimes.com/2021/02/05/us/politics/trump-impeachment-defense.html>.
65. U.S. Const. art. II, §1, cl. 8.
66. See 77 C.J.S. Riot §36.
67. Eugene Kiely et al, *The President's Trumped-Up Claims of Voter Fraud*, FactCheck.org (Jul. 30, 2020), <https://www.factcheck.org/2020/07/the-presidents-trumped-up-claims-of-voter-fraud/>.
68. C-SPAN, *President Trump Remarks in Oshkosh, Wisconsin*, (Aug. 17, 2020), <https://www.c-span.org/video/?474841-1/president-trump-give-acceptance-speech-white-house-week>.
69. Paul LeBlanc & Jason Hoffman, *Trump again casts doubt on whether he'll accept election result in latest unfounded attack on voting process*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-2020-election-ballots/index.html>.
70. Sanya Mansoor, *'I Have to See.' Mr. Trump Refuses to Say If He Will Accept the 2020 Election Results*, TIME (Jul. 19, 2020), <https://time.com/5868739/trump-election-results-chris-wallace/>.
71. Nick Niedzwiedek et al, *After Trump meeting, Michigan GOP leaders say Biden's win still stands*, Politico (Nov. 20, 2020) <https://www.politico.com/news/2020/11/20/michigan-gop-dc-trump-election-438690>.
72. Staff Reports, *READ THE FULL STATEMENT: Trump Responds to Biden Being Projected as Winner*, NBC Boston (Nov. 7, 2020), <https://www.nbcboston.com/news/local/read-the-full-statement-president-trump-responds-to-biden-being-projected-as-winner/2225599/>.
73. Aamer Madhani & Kevin Freking, *In video, Trump spreads baseless claims about voter fraud*, PBS News (Dec. 2, 2020), <https://www.pbs.org/newshour/politics/in-video-trump-spreads-baseless-claims-about-voter-fraud>.
74. Philip Rucker, *Trump escalates baseless attacks on election with 46-minute video rant*, Wash. Post (Dec. 2, 2020), <https://www.washingtonpost.com/politics/trump-election-video/2020/12/02/f6c8d63c-34e8-11eb-a997-1f4c53d2a747-story.html>.
75. Aamer Madhani & Kevin Freking, *In video, Trump spreads baseless claims about voter fraud*, PBS News (Dec. 2, 2020), <https://www.pbs.org/newshour/politics/in-video-trump-spreads-baseless-claims-about-voter-fraud>.
76. James Crowley, *Trump Attacks FBI, DOJ, Supreme Court and GOP Senators in Twitter Tirade*, Newsweek (Dec. 26, 2020), <https://www.newsweek.com/trump-attacks-doj-fbi-supreme-court-gop-senators-mitch-mcconnell-twitter-1557376>.
77. Alana Wise, *Despite Clear Defeat, Trump Vows To Fight On, Continues Disinformation In Georgia*, NPR (Jan. 4, 2021), <https://www.npr.org/2021/01/04/953436607/despite-clear-defeat-trump-vows-to-fight-on-continues-disinformation-in-georgia>.
78. Ariane de Vogue & Paul LeBlanc, *Trump asks Supreme Court to invalidate millions of votes in battleground states*, CNN (Dec. 10, 2020), <https://www.cnn.com/2020/12/09/politics/trump-supreme-court/index.html>.
79. William Cummings et al, *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA Today (Jan. 6, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.
80. *Ibid.*
81. *It's Official: The Election Was Secure*, Brennan Ctr. for Justice (Dec. 11, 2020), <https://www.brennancenter.org/our-work/research-reports/its-official-election-was-secure>.
82. GCC et al, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees*, CISA (Nov. 12, 2020), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.
83. <https://abcnews.go.com/Politics/trump-pressure-pence-reject-bidens-win-congress-wednesday/story?id=75057551>.
84. Colby Itkowitz, *'Liberate': Trump tweets support of protests against stay-at-home orders*, Wash. Post (Apr. 17, 2020), <https://www.washingtonpost.com/politics/2020/04/17/liberate-trump-tweets-support-protesting-against-stay-at-home-orders/>.
85. Rebecca Boone, *Armed statehouse protests set tone for US Capitol insurgents*, Associated Press (Jan. 7, 2021), <https://apnews.com/article/election-2020-coronavirus-pandemic-oregon-elections-idaho-688fc8894f44992487bb6ee45e9abd77>.
86. John Flesher, *6 men indicted in alleged plot to kidnap Michigan governor*, A.P. (Dec. 17, 2020), <https://apnews.com/article/gretchen-whitmer-michigan-indictments-coronavirus-pandemic-traverse-city-10f7e02c57004da9843f89650edd4510>.
87. 13 On Your Side Staff, *Mr. Trump responds after failed Gov. Whitmer kidnap plot*, 12

News (Oct. 8, 2020), <https://www.12newsnow.com/article/news/health/coronavirus/president-trump-responds-after-failed-gov-whitmer-kidnap-plot/69-3a86c917-343a-431b-91b1-df5e72726a96>.

88. Katie Shepherd, *Trump cheers supporters who swarmed a Biden bus in Texas: 'These patriots did nothing wrong'*, Wash. Post (Nov. 2, 2020), <https://www.washingtonpost.com/nation/2020/11/02/trump-caravan-biden-bus/>.

89. Matthew Schwartz, *Trump Speaks Fondly Of Supporters Surrounding Biden Bus In Texas*, NPR (Nov. 1, 2020), <https://www.npr.org/2020/11/01/930083915/trump-speaks-fondly-of-supporters-protecting-biden-bus-in-texas>.

90. Stephen Fowler, *'Someone's Going To Get Killed': Ga. Official Blasts GOP Silence On Election Threats*, NPR (Dec. 1, 2020), <https://www.npr.org/sections/biden-transition-updates/2020/12/01/940961602/someones-going-to-get-killed-ga-official-blasts-gop-silence-on-election-threats>.

91. Melissa Quinn, *"Stand back and stand by": Trump declines to condemn white supremacists at debate*, CBS News (Sep. 30, 2020), <https://www.cbsnews.com/news/proud-boys-stand-back-and-stand-by-trump-refuses-to-condemn-white-supremacists/>.

92. Sheera Frenkel & Annie Karni, *Proud Boys celebrate Trump's 'stand by' remark about them at the debate*, N.Y. Times (Sept. 29, 2020), <https://www.nytimes.com/2020/09/29/us/trump-proud-boys-biden.html>.

93. Ben Collins & Brandy Zadrozny, *Proud Boys celebrate after Trump's debate callout*, NBC News (Sep. 30, 2020), <https://www.nbcnews.com/tech/tech-news/proud-boys-celebrate-after-trump-s-debate-call-out-n1241512>.

94. Alex Kaplan, *Trump has repeatedly amplified QAnon Twitter accounts. The FBI has linked the conspiracy theory to domestic terror*, Media Matters (Jan. 11, 2021), <https://www.mediamatters.org/twitter/fbi-calls-qanon-domestic-terror-threat-trump-has-amplified-qanon-supporters-twitter-more-20>.

95. Axios, *Trump praises Anon supporters: 'I understand they like me very much'*, Axios (Aug. 20, 2020), <https://www.axios.com/trump-praises-qanon-supporters-i-understand-they-like-me-very-much-42146fb3-bd69-4943-8e80-2f0bcf4b0b17.html>.

96. Philip Bump, *Rather than condemn the QAnon conspiracy theory, Trump elevates its dangerous central assertion*, Wash. Post (Oct. 15, 2020), <https://www.washingtonpost.com/politics/2020/10/15/rather-than-condemn-qanon-conspiracy-theory-trump-elevates-its-dangerous-central-assertion/>.

97. Dan Barry & Sheera Frenkel, *"Be There. Will Be Wild!": Trump All but Circled the Date*, N.Y. Times (Jan. 6, 2021), <https://www.nytimes.com/2021/01/06/us/politics/capitol-mob-trump-supporters.html>.

98. Donald Trump, *See you in Washington, DC, on January 6th. Don't miss it. Information to follow!*, Facebook (Dec. 27, 2020), <https://m.facebook.com/DonaldTrump/posts/see-you-in-washington-dc-on-january-6th-dont-miss-it-information-to-follow/10166040173540725/>.

99. Dan Barry & Sheera Frenkel, *"Be There. Will Be Wild!": Trump All but Circled the Date*, N.Y. Times (Jan. 6, 2021), <https://www.nytimes.com/2021/01/06/us/politics/capitol-mob-trump-supporters.html>.

100. @realdonaldtrump, *I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11 AM Eastern. Arrive early—doors open at 7 AM Eastern. BIG CROWDS!*, Instagram (Jan. 5, 2020), <https://www.instagram.com/p/CJrjQ79sY3Q/?hl=en>.

101. 167 Cong. Rec. S629 (daily ed. Feb. 10, 2021) (statement of Ms. Manager Plaskett), <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf>.

102. Philip Bump, *When did the Jan. 6 rally become a march to the Capitol?*, Wash. Post

(Feb. 10, 2021), <https://www.washingtonpost.com/politics/2021/02/10/when-did-jan-6-rally-become-march-capitol/> 103. 167 Cong. Rec. S629 (daily ed. Feb. 10, 2021) (statement of Ms. Manager Plaskett), <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf>.

104. Women For Trump, *Meet the Advisory Board*, <https://women.donaldjtrump.com/>.

105. 167 Cong. Rec. S630 (daily ed. Feb. 10, 2021) (statement of Ms. Manager Plaskett), <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf> (page S630).

106. Greg Miller et al., *A mob insurrection stoked by false claims of election fraud and promises of violent restoration*, Wash. Post (Jan. 9, 2021), <https://www.washingtonpost.com/national-security/trump-capitol-mob-attack-origins/2021/01/09/0cb2cf5e-51d4-11eb-83e3-322644d82356-story.html>.

107. 167 Cong. Rec. S623 (daily ed. Feb. 10, 2021) (statement of Mr. Manager Swallow), <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf>.

108. Bill Bostock, *Videos show Trump protesters chanting 'count those votes' and 'stop the count' outside separate ballot-counting sites in Arizona and Michigan*, Bus. Insider (Nov. 5, 2020), <https://www.businessinsider.com/videos-trump-protesters-michigan-arizona-vote-count-2020-11>.

109. Jason Slotkin et al., *4 Stabbed, 33 Arrested After Trump Supporters, Counterprotesters Clash In D.C.*, NPR (Dec. 12, 2020), <https://www.npr.org/2020/12/12/945825924/trump-supporters-arrive-in-washington-once-again-for-a-million-maga-march>.

110. Atlantic Council's DFRLab, *#StopTheSteal: Timeline of Social Media and Extremist Activities Leading to 1/6 Insurrection*, Just Security (Feb. 10, 2021), <https://www.justsecurity.org/74622/stopthesteal-timeline-of-social-media-and-extremist-activities-leading-to-1-6-insurrection/>.

111. Pilar Melendez, *'Trump Is Calling Us to Fight!': Georgia Teen Charged in Capitol Riots*, Daily Beast (Feb. 8, 2021), <https://money.yahoo.com/trump-calling-us-fight-georgia-232147165.html>.

112. Dan Barry et al., *'Our President Wants Us Here': The Mob That Stormed the Capitol*, N.Y. Times (Feb. 5, 2021), <https://www.nytimes.com/2021/01/09/us/capitol-rioters.html>.

113. Alan Feuer & Nicole Hong, *'I Answered the Call of My President': Rioters Say Trump Urged Them On*, N.Y. Times (Jan. 17, 2021), <https://www.nytimes.com/2021/01/17/nyregion/protesters-blaming-trump-pardon.html>.

114. Aaron Blake, *What Trump said before his supporters stormed the Capitol*, annotated, Wash. Post (Jan. 11, 2021), *Trump's speech before rioters stormed the Capitol*, annotated—Washington Post

115. Ibid.

116. Julia Jacobo, *A visual timeline on how the attack on Capitol Hill unfolded*, ABC News (Jan. 10, 2021), <https://abcnews.go.com/US/visual-timeline-attack-capitol-hill-unfolded/story?id=75112066>.

117. Ibid.

118. Jamie Raskin et al., *Trial Memorandum of the United States House of Representatives In the Impeachment Trial of President Donald J. Trump*, House Judiciary Com. (Feb. 2, 2021), at 22, <https://judiciary.house.gov/uploadedfiles/house-trial-brief-final.pdf>. Taken from Marc Fisher et al., *The Four-Hour Insurrection*, Wash. Post (Jan. 7, 2021), <https://www.washingtonpost.com/graphics/2021/politics/trump-insurrection-capitol/>.

119. Evan Hill et al., *They Got a Officer!': How a Mob Dragged and Beat Police at the Capitol*, N.Y. Times (Jan. 11, 2021), <https://timesofindia.indiatimes.com/world/us/they-got-a-officer-how-a-mob-dragged-and-beat>

police-at-the-capitol/articleshow/80225478.cms; Peter Hermann, *'We Got to Hold This Door'*, Wash. Post (Jan. 14, 2021), <https://www.washingtonpost.com/dc-md-va/2021/01/14/dc-police-capitol-riot/?arc404=true>. Luke Mogelson, New Yorker, *Among the Insurrectionists*, The New Yorker (Jan. 15, 2021), <https://www.newyorker.com/magazine/2021/01/25/among-the-insurrectionists>.

120. Officer Christopher Frank Affidavit, at 1 (Jan. 6, 2021), <https://perma.cc/YN87-BDKH>; Officer Alexandria Sims Affidavit, at 1 (Jan. 7, 2021), <https://perma.cc/392C-CGPC>; Special Agent Lawrence Anyaso Affidavit, at 1 (Jan. 7, 2021), <https://perma.cc/M3GZ-WSVM>; Luke Mogelson, New Yorker, *Among the Insurrectionists*, The New Yorker (Jan. 15, 2021), <https://www.newyorker.com/magazine/2021/01/25/among-the-insurrectionists>.

121. Julia Jacobo, *A visual timeline on how the attack on Capitol Hill unfolded*, ABC News (Jan. 10, 2021), <https://abcnews.go.com/US/visual-timeline-attack-capitol-hill-unfolded/story?id=75112066>.

122. Ibid.

123. Ibid.

124. Lauren Leatherby & Anjali Singhvi, *Critical Moments in the Capitol Siege*, N.Y. Times (Jan. 15, 2021), <https://www.nytimes.com/interactive/2021/01/15/us/trump-capitol-riot-timeline.html>.

125. Ashley Parker et al., *How the Rioters Who Stormed the Capitol Came Dangerously Close to Pence*, Wash. Post (Jan. 15, 2021), https://www.washingtonpost.com/politics/pence-rioters-capitol-attack/2021/01/15/ab62e434-567c-11eb-a08b-f1381ef3d207_story.html.

126. Rebecca Tan, *A Black Officer Faced Down a Mostly White Mob at the Capitol. Meet Eugene Goodman*, Wash. Post (Jan. 14, 2021), https://www.washingtonpost.com/local/public-safety/goodman-capitol-police-video/2021/01/13/08ab3eb6-546b-11eb-a931-5b162d0d033d_story.html.

127. Marc Fisher et al., *The Four-Hour Insurrection*, Wash. Post (Jan. 7, 2021), <https://www.washingtonpost.com/podcasts/post-reports-four-hours-of-insurrection/>; Lauren Leatherby et al., *How a Presidential Rally Turned Into a Capitol Rampage*, N.Y. Times (Jan. 12, 2021), <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html>.

128. Julia Jacobo, *A visual timeline on how the attack on Capitol Hill unfolded*, ABC News (Jan. 10, 2021), <https://abcnews.go.com/US/visual-timeline-attack-capitol-hill-unfolded/story?id=75112066>.

129. Marc Fisher et al., *The Four-Hour Insurrection*, Wash. Post (Jan. 7, 2021), <https://www.washingtonpost.com/podcasts/post-reports-four-hours-of-insurrection/>.

130. Ibid.

131. Ellen Barry et al., *Woman Killed in Capitol Embraced Trump and QAnon*, N.Y. Times (Jan. 7, 2021), <https://www.nytimes.com/2021/01/07/us/who-was-ashli-babbitt.html>.

132. 6 Rep. Dan Kildee (@RepDanKildee), Twitter (Jan. 6, 2021, 2:52 PM), <https://twitter.com/RepDanKildee/status/1346907565482004495>; Rose Minutaglio, *Rep. Susan Wild On The 'Sheer Panic' She Felt In That Viral Photo*, Elle (Jan. 7, 2021), <https://newsopener.com/fashion/rep-susan-wild-on-the-sheer-panic-she-felt-in-that-viral-photo/>; CBS News, *Video Shows Members of Congress Taking Cover in House Gallery*, (Jan. 6, 2021), <https://ft.cbsnews.com/video/video-shows-members-of-congress-taking-cover-in-house-gallery-cbsnews-special-report-2021-01-06/>.

133. Haley Britzky, *This Army Ranger-turned-Congressman was last out of the House chamber during the Capitol riots*, Task and Purpose (Jan. 7, 2021), <https://taskandpurpose.com/news/jason-crow-army-ranger-capitol-riots/>.

134. Ibid.

135. CBS News, *Video shows members of Congress taking cover in House gallery*, CBS (Jan. 6, 2021), <https://www.cbsnews.com/video/video-shows-members-of-congress-taking-cover-in-house-gallery-cbsnews-special-report-2021-01-06/>.
136. Julia Jacobo, *A visual timeline on how the attack on Capitol Hill unfolded*, ABC News (Jan. 10, 2021), <https://abcnews.go.com/US/visual-timeline-attack-capitol-hill-unfolded/story?id=75112066>.
137. 2 David K. Li & Ali Gostanian, *Georgia Lawyer Said He Kicked in Pelosi's Door, She Could've Been 'Torn into Little Pieces'*, NBC News (Jan. 19, 2021), <https://www.nbcnews.com/news/us-news/georgia-lawyer-said-he-kicked-pelosi-s-door-she-could-n1254756>.
138. Ashley Parker et al., *How the Rioters Who Stormed the Capitol Came Dangerously Close to Pence*, Wash. Post (Jan. 15, 2021), https://www.washingtonpost.com/politics/pence-rioters-capitol-attack/2021/01/15/ab62e434-567c-11eb-a08b-f1381ef3d207_story.html.
139. Peter Baker et al., *Pence Reached His Limit with Trump. It Wasn't Pretty*, N.Y. Times (Jan. 12, 2021).
140. Lauren Leatherby et al., *How a Presidential Rally Turned Into a Capitol Rampage*, N.Y. Times (Jan. 12, 2021), <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html>.
141. Maggie Haberman & Jonathan Martin, *After the Speech: What Trump Did as the Capitol Was Attacked*, N.Y. Times (Feb. 13, 2021), <https://www.nytimes.com/2021/02/13/us/politics/trump-capitol-riot.html>.
142. Lexi Lonas, *Sasse says Trump was 'delighted' and 'excited' by reports of Capitol*, The Hill (Jan. 8, 2021), <https://thehill.com/homenews/senate/533403-sasse-says-trump-was-delighted-and-excited-by-reports-of-capitol-riot>.
143. Sunlen Serfaty et al., *As riot raged at Capitol, Trump tried to call senators to overturn election*, CNN (Jan. 8, 2021), <https://www.cnn.com/2021/01/08/politics/mike-lee-tommy-tuberville-trump-misdialed-capitol-riot/index.html>.
144. Judge G. Michael Harvey, *Special Agent James Soltes Affidavit*, (Jan. 8, 2021), at 3 <https://www.justice.gov/usao-dc/case-multi-defendant/file/1364486/download>; Alan Feurer & Nicole Hong, 'I Answered the Call of My President': Rioters Say Trump Urged Them On, N.Y. Times (Jan. 17, 2021), <https://www.nytimes.com/2021/01/17/nyregion/protesters-blaming-trump-pardon.html>.
145. Dan Barry et al., 'Our President Wants Us Here': The Mob That Stormed the Capitol, N.Y. Times (Jan. 9, 2021), <https://www.nytimes.com/2021/01/09/us/capitol-riot-ers.html>.
146. David Begnaud (@DavidBegnaud), Twitter (Jan. 15, 2021, 8:30 PM) <https://twitter.com/DavidBegnaud/status/1350254179218911232>.
147. Kyle Cheney & Josh Gerstein, *Judge orders Proud Boy charged in Capitol riot held without bond*, Politico (Feb. 10, 2021), <https://www.politico.com/news/2021/02/10/proud-boy-insurrection-trump-468353>.
148. Shelly Tan et al., *How One of America's Ugliest Days Unraveled Inside and Outside the Capitol*, Wash. Post (Jan. 9, 2021), <https://www.washingtonpost.com/nation/interactive/2021/capitol-insurrection-visual-timeline/>.
149. Ibid.
150. Staff of H. Comm. on the Judiciary, 93rd Cong., Rep. on Constitutional Grounds for Presidential Impeachment 27 (Comm. Print 1974).
151. U.S. Const. amend. I.
152. Roth v. United States, 354 U.S. 476, 482 (1957).
153. Victoria L. Killion, *The First Amendment: Categories of Speech*, CRS (Jan. 16, 2019), <https://crsreports.congress.gov/product/pdf/IF/IF11072>.
154. Brandenburg v. Ohio, 395 U.S. 444 (1969).
155. Ibid.
156. Ibid.
157. Hess v. Indiana, 414 U.S. 105, 110 (1973).
158. Id. at 107.
159. Id. at 108–109.
160. NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982).
161. Id. at 886.
162. Id. at 927.
163. Id. at 928.
164. Garcetti v. Ceballos, 547 U.S. 410, 419 (2006).
165. Cornell Law, *GARCETTI v. CEBALLOS* (No. 04-473), Legal Inf. Inst. (May 30, 2006), <https://www.law.cornell.edu/supct/html/04-473.ZS.html>.
166. Ibid.
167. Rosalind S. Helderman et al., 'Trump said to do so': Accounts of rioters who say the president spurred them to rush the Capitol could be pivotal testimony, Wash. Post (Jan. 16, 2021), https://www.washingtonpost.com/politics/trump-rioters-testimony/2021/01/16/01b3d5c6-575b-11eb-a931-5b162dd0d033d_story.html.
168. 167 Cong. Rec. S659 (daily ed. Feb. 11, 2021) (statement of Mr. Manager Raskin), <https://www.congress.gov/117/crec/2021/02/11/CREC-2021-02-11-pt1-PgS645-2.pdf>.
169. Washington Papers, *The Electoral Count for the Presidential Election of 1789*, University of Virginia, (<https://washingtonpapers.org/resources/articles/the-electoral-count-for-the-presidential-election-of-1789/>).
170. National Archives, *2020 Electoral College Results*, National Archives and Records Administration (2020), <https://www.archives.gov/electoral-college/2020>.
171. Mark Sherman, Associated Press, *Biden clears Electoral College 270-vote threshold to become president*, PBS News (Dec. 14, 2020), <https://www.pbs.org/newshour/politics/biden-clears-electoral-college-270-vote-threshold-to-become-president>.
172. Ibid.
173. John Wagner et al., *Pence declares Biden winner of the presidential election after Congress finally counts electoral votes*, Wash. Post (Jan. 7, 2021), <https://www.washingtonpost.com/politics/2021/01/06/congress-electoral-college-vote-live-updates/>.
174. William Cummings et al., *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA Today (Jan. 6, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.
175. Matt Zapotosky & Devlin Barrett, *Barr clears Justice Dept. to investigate alleged voting irregularities as Trump makes unfounded fraud claims*, Wash. Post (Nov. 9, 2020), https://www.washingtonpost.com/national-security/trump-voting-fraud-william-barr-justice-department/2020/11/09/d57dbe98-22e6-11eb-8672-c281c7a2c96e_story.html.
176. Jess Bravin & Sadie Gurman, *Trump Pressed Justice Department to Go Directly to Supreme Court to Overturn Election Results*, W.S. Journal (Jan. 23, 2021), <https://www.wsj.com/articles/trump-pressed-to-change-justice-department-leadership-to-boost-his-voter-fraud-claims-11611434369>.
177. Michael Crowley et al., *In his first one-on-one interview since losing to Biden, Trump baselessly cast more conspiracy theories*, N.Y. Times (Dec. 23, 2020), <https://www.nytimes.com/live/2020/11/29/us/joe-biden-trump#in-his-first-one-on-one-interview-since-losing-to-biden-trump-baselessly-cast-more-conspiracy-theories>.
178. Kadhim Shubber, *William Barr Election Memo—November 9*, Financial Times (Nov. 9, 2020), <https://beta.documentcloud.org/docu-ments/20403358-william-barr-election-memo-november-9>.
179. Katie Benner & Adam Goldman, *Federal Prosecutors Push Back on Barr Memo on Voter Fraud Claims*, CNN (Nov. 13, 2020), <https://www.nytimes.com/2020/11/13/us/politics/justice-department-voter-fraud.html>.
180. Kate Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, N.Y. Times (Jan. 22, 2021), <https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html>.
181. Ibid.
182. U.S. Const. art. II, §1, cl. 2.
183. Electoral Count Act, Pub.L. 49-90.
184. NCSL, *The Electoral College*, (Nov. 11, 2020), <https://www.ncsl.org/research/elections-and-campaigns/the-electoral-college.aspx>.
185. Peter Alexander et al., *Trump invites Michigan GOP lawmakers to White House after calling officials in key county*, NBC News (Nov. 19, 2020), <https://www.nbcnews.com/politics/2020-election/trump-called-michigan-republicans-they-sought-rescind-their-certification-votes-n1248254>.
186. Nick Niedzwiedek et al., *After Trump meeting, Michigan GOP leaders say Biden's win still stands*, Politico (Nov. 20, 2020) <https://www.politico.com/news/2020/11/20/michigan-gop-dc-trump-election-438690>; & Ursula Perano, *Trump called Michigan Republican who wanted to flip vote on Wayne County election certification*, Axios (Nov. 19, 2020), <https://www.axios.com/trump-called-wayne-county-republican-michigan-vote-ff545fb1-657a-4016-939d-015e5289e894.html>.
187. Anita Kumar & Gabby Orr, *Inside Trump's pressure campaign to overturn the election*, Politico (Dec. 21, 2020), <https://www.politico.com/news/2020/12/21/trump-pressure-campaign-overturn-election-449486>.
188. Amy Gardner et al., *Trump asks Pennsylvania House speaker for help overturning election results, personally intervening in a third state*, Wash. Post (Dec. 8, 2020), https://www.washingtonpost.com/politics/trump-pennsylvania-speaker-call/2020/12/07/d65fe8c4-38bf-11eb-98c4-25dc9f4987e8_story.html.
189. Alison Durkee, *Trump Campaign Assembling Alternate Electors in Key States in Far-Fetched Attempt to Overturn Election*, Forbes (Dec. 14, 2020), <https://www.forbes.com/sites/alisondurkee/2020/12/14/trump-campaign-assembling-alternate-electors-in-key-states-in-far-fetched-attempt-to-overturn-election/?sh=66a9659b3213>.
190. Deanna Paul, *Republican Electors Cast Unofficial Ballots, Setting Up Congressional Clash*, Wall St. J. (Dec. 28, 2020), <https://www.wsj.com/articles/republican-electors-cast-unofficial-ballots-setting-up-congressional-clash-11609164000>.
191. Rick Hasen, *Trump Campaign Planning on Sending Alternative Slate of Electors to Congress, Per Stephen Miller. It Won't Matter to the Outcome*, Election Law Blog (Dec. 14, 2020), <https://electionlawblog.org/?p=119632>.
192. Anita Kumar & Gabby Orr, *Inside Trump's pressure campaign to overturn the election*, Politico (Dec. 21, 2020), <https://www.politico.com/news/2020/12/21/trump-pressure-campaign-overturn-election-449486>.
193. Amy Gardner, *I just want to find 11,780 votes: In extraordinary hour-long call, Trump pressures Georgia secretary of state to recalculate the vote in his favor*, Wash. Post (Jan. 3, 2021), https://www.washingtonpost.com/politics/trump-raffensperger-call-georgia-vote/2021/01/03/d45acb92-4dc4-11eb-bda4-615aaef0d555_story.html.
194. The New York Times, *Transcript: Mr. Trump's Phone Call With Georgia Election Officials*, N.Y. Times (Jan. 3, 2021), <https://www.nytimes.com/2021/01/03/us/politics/trump-raffensperger-georgia-call-transcript.html>.
195. Ibid.
196. Miles Parks, *Georgia Election Official: Don't Let Misinformation 'Suppress Your Own*

Vote', NPR (Jan. 4, 2021), <https://www.npr.org/2021/01/04/953321408/georgia-election-official-dont-let-misinformation-suppress-your-own-vote>.

197. U.S. Const. art. II, §1.

198. Michael Schmidt, *Trump Says Pence Can Overturn His Loss in Congress. That's Not How It Works*, N.Y. Times (Jan. 5, 2021), <https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election.html>.

199. Maggie Haberman & Katie Benner, *Justice Dept. Asks Judge to Toss Election Lawsuit Against Pence*, N.Y. Times (Dec. 31, 2020), <https://www.nytimes.com/2020/12/31/us/politics/justice-department-mike-pence-louie-gohmert.html>.

200. Caroline Linton, *Judge dismisses Gohmert's attempt to force Pence to decide election results*, CBS (Jan. 3, 2021), <https://www.cbsnews.com/news/louie-gohmert-trump-election-lawsuit-pence-dismissed-federal-judge/>.

201. Nick Niedzwiedek & Kyle Cheney, *Trump pressures Pence to throw out election results—even though he can't*, Politico (Jan. 5, 2021), <https://www.politico.com/news/2021/01/05/trump-pressure-pence-election-results-455069>.

202. *Ibid.*

203. Josh Dawsey & Ashley Parker, *Inside the remarkable rift between Donald Trump and Mike Pence*, Wash. Post (Jan. 11, 2021), https://www.washingtonpost.com/politics/trump-pence-breakup-capitol-riot/2021/01/11/6a6aa052-5357-11eb-89bc-7f51ceb6bd57_story.html.

204. *Ibid.*

205. Jeff Mason, *Despite Trump pressure, Pence will not block Biden's election certification: advisers*, Reuters (Jan. 4, 2021), <https://www.reuters.com/article/us-usa-election-pence/despite-trump-pressure-pence-will-not-block-bidens-election-certification-advisers-idUSKBN29A2J0>.

206. Quint Forgy, *'Do it Mike': Trump leans on Pence to reject Biden's Electoral College certification*, Politico (Jan. 6, 2021), <https://www.politico.com/news/2021/01/06/do-it-mike-trump-leans-on-pence-to-reject-bidens-electoral-college-certification-455319>.

207. Ashley Collman, *Trump is still wrongly insisting that Pence can change the election result, and he called a New York Times report that said otherwise 'fake news'*, Bus. Insider (Jan. 6, 2021), <https://www.businessinsider.com/trump-wrongly-insisting-pence-can-overturn-election-2021-1>.

208. Brian Naylor, *Read Trump's Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021), <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.

209. John Haltiwanger, *Trump attacks Pence for not having the 'courage' to overturn the election as the president's supporters storm the Capitol*, Bus. Insider (Jan. 6, 2021), <https://www.businessinsider.com/trump-attacks-pence-for-not-having-courage-to-overturn-election-2021-1>.

210. <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf> (S626).

211. Paul Kane & Scott Clement, *Just 27 congressional Republicans acknowledge Biden's win*, Washington Post survey finds, Wash. Post (Dec. 5, 2020), https://www.washingtonpost.com/politics/survey-who-won-election-republicans-congress/2020/12/04/1a011f6-3650-11eb-8d38-6ae1adb3839_story.html.

212. Anita Kumar & Gabby Orr, *Inside Trump's pressure campaign to overturn the election*, Politico (Dec. 21, 2020), <https://www.politico.com/news/2020/12/21/trump-pressure-campaign-overturn-election-449486>.

213. *Ibid.*

214. Daniella Diaz, *READ: Brief from 126 Republicans supporting Texas lawsuit in Supreme Court*, CNN (Dec. 11, 2020), <https://www.cnn.com/2020/12/10/politics/read-house-republicans-texas-supreme-court/index.html>.

215. Adam Liptak, *Supreme Court Rejects Texas Suit Seeking to Subvert Election*, N.Y. Times (Dec. 11, 2020), <https://www.nytimes.com/2020/12/11/us/politics/supreme-court-election-texas.html>.

216. Andrew Solender, *Nearly a Dozen Republican Senators Will Object to Electoral College Vote*, Forbes (Jan. 2, 2021), <https://www.forbes.com/sites/andrewsolender/2021/01/02/nearly-a-dozen-republican-senators-will-object-to-electoral-college-vote/?sh=7965a5881c3e>.

217. Jake Tapper, *At least 140 House Republicans to vote against counting electoral votes, two GOP lawmakers say*, CNN (Dec. 31, 2020), <https://www.cnn.com/2020/12/31/politics/electoral-college-house-republicans/index.html>.

218. Dareh Gregorian, *Congress is set to count the Trump-Biden Electoral College votes. Here's the lowdown*, ABC News (Jan. 5, 2021), <https://www.nbcnews.com/politics/2020-election/congress-set-count-trump-biden-electoral-college-votes-here-s-n1252609>.

219. Meryl Kornfield, *From a presidential commission to Trump-nominated judges, here's who has rebuked Trump's voter fraud claims*, Wash. Post (Jan. 3, 2021), <https://www.washingtonpost.com/politics/2021/01/03/voter-fraud/>.

220. GCC et al, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees*, CISA (Nov. 12, 2020), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

221. Katie Benner & Michael S. Schmidt, *Barr Acknowledges Justice Dept. Has Found No Widespread Voter Fraud*, N.Y. Times (Dec. 1, 2020), <https://www.nytimes.com/2020/12/01/us/politics/william-barr-voter-fraud.html>.

222. The Avalon Project, *Madison Debates*, Yale Law School Lillian Goldman Law Library (Jul. 20, 1787), https://avalon.law.yale.edu/18th_century/debates_720.asp.

223. *Id.* at 64.

224. *Ibid.*

225. U.S. Const. amend. XX, §1.

226. Sara Georgini, *How John Adams Managed a Peaceful Transition of Presidential Power*, Smithsonian Mag. (Dec. 7, 2020), <https://www.smithsonianmag.com/history/how-john-adams-managed-peaceful-transition-presidential-power-180976451/>.

227. 167 Cong. Rec. S627 (daily ed. Feb. 11, 2021) (statement of Mr. Manager Lieu), <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf> (S627).

228. The Federalist Paper No. 47 (James Madison) (Jacob E. Cooke ed., 1961).

229. See generally The Federalist Paper No. 47 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 48 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 49 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 50 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 51 (James Madison) (Jacob E. Cooke ed., 1961). (Federalist Papers No. 47 through No. 51 explain how the Executive, Legislative, and Judicial Branches were to be wholly separated from each other, yet accountable to each other through a system of checks and balances.); See also *Nixon v. Administrator of General Services*, 433 U.S. 425, 426 (1977). (In *Nixon v. GSA*, the Supreme Court articulated the test for a violation of the separation of powers as occurring when the action of one branch "prevents [another branch] from accomplishing its constitutionally assigned functions.")

230. U.S. Const. art. II, §3.

231. 167 Cong. Rec. S641-S643 (daily ed. Feb. 10, 2021) (statement of Mr. Manager Castro), <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf>.

232. 167 Cong. Rec. S641-S642 (daily ed. Feb. 10, 2021) (statement of Mr. Manager Castro), <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf> (S641-S642).

233. 167 Cong. Rec. S642 (daily ed. Feb. 10, 2021) (statement of Mr. Manager Castro), <https://www.congress.gov/117/crec/2021/02/10/CREC-2021-02-10-pt1-PgS615-4.pdf>.

234. Matt Stieb, *Pence, Not Trump, Gave Order to Activate National Guard: Report*, Intelligencer, N.Y. Mag. (Jan. 6, 2021), <https://nymag.com/intelligencer/2021/01/pence-not-trump-activated-the-national-guard-report.html>.

235. U.S. Const. art. II, §1, cl. 8.

236. 167 Cong. Rec. S662 (daily ed. Feb. 11, 2021) (statement of Mr. Manager Raskin), <https://www.congress.gov/117/crec/2021/02/11/CREC-2021-02-11-pt1-PgS645-2.pdf>.

Ms. COLLINS. Mr. President, the Senate was asked to decide whether this body has the constitutional jurisdiction to hold an impeachment trial of Donald Trump now that he is no longer President of the United States. While the Constitution does not explicitly address Congress' jurisdiction when the subject of impeachment is a former President—or any former officer—its text and purpose as applied to the facts in this matter support the conclusion that the trial should proceed.

The question of Senate jurisdiction should start with the text of the Constitution itself. The impeachment process is described in article I, which delineates the respective powers of the House of Representatives and the Senate. Section 2 plainly states that the House "shall have the sole power of impeachment." In this matter, there is no dispute that impeachment occurred before former President Trump's term expired, and, therefore, there is no dispute that the House had jurisdiction to impeach him.

What is at issue is whether the impeachment trial can occur in the Senate now that former President Trump is no longer in office. Again, I look to the text of article I. Section 3 states that "the Senate shall have the sole Power to try all Impeachments." As former Federal circuit court Judge Michael McConnell has observed, the key word here is "all." Sections 2 and 3 read together lead to the inescapable conclusion that, if the House presents the Senate with a valid impeachment article, the Senate has jurisdiction to conduct the trial.

Some have argued that such an interpretation would put all former Presidents, Vice Presidents, and office holders dating back to the Washington administration at risk of being impeached and convicted, but the facts in this matter do not require such a sweeping conclusion. By asserting its jurisdiction over this trial, the Senate is simply ruling that a President who was impeached while still in office can be tried after he is no longer in office—nothing more.

The former President's attorneys argue that the Senate does not have jurisdiction to conduct a trial because the penalty prescribed for conviction

under article II, section 4, is removal from office. Because former President Trump cannot be removed, they argue that the Constitution requires he not be tried. But article I, section 4, authorizes the Senate to impose the penalty of permanent disqualification from holding office in the future if it chooses to do so. And, notably, a vote on whether or not to disqualify can only be taken after conviction, at which point any defendant would have been removed and no longer an office holder.

If the defense's argument were to be followed to its logical conclusion, it would lead to a constitutional absurdity—the Senate would have the sole power to apply the disqualification penalty, but it would never have jurisdiction to do so. If the Senate were unable to consider disqualification after a President is no longer in office, the second penalty would lose its meaning. A more sensible reading of article I, section 4, is that both punishments, removal and disqualification, are equally significant, and therefore, the Senate has jurisdiction in this matter.

For all the reasons I have set forth, I believe that the Senate must exercise jurisdiction, and I voted to begin its impeachment proceedings.

Mr. CASEY. Mr. President, I ask unanimous consent that the following statement regarding the impeachment trial of the former President be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT ON THE SECOND IMPEACHMENT TRIAL OF THE FORMER PRESIDENT

Mr. CASEY. Mr. President. The former President's conduct during and after the 2020 Presidential election was indefensible and dangerous. By inciting an insurrection against Congress and pressuring government officials across our Nation to overturn the election in his favor, the former President directly "threatened the integrity of the democratic system, interfered with the peaceful transition of power, and imperiled a coequal branch of Government."¹ As long as he is able to hold public office under the United States, he will remain a grave threat to our national security and our Constitution. For these reasons, I again voted to convict the former President on the House of Representatives' Article of Impeachment.

CONSTITUTIONALITY OF THE TRIAL

As a threshold question in this trial, the former President's legal team and several Republican Senators have argued that the Senate cannot hold an impeachment trial against a President who is no longer in office.² This argument is just another convenient excuse for some of my Republican colleagues to avoid holding the former President accountable. Not only has the theory been roundly rejected by both liberal and conservative constitutional legal scholars,³ it would also completely contravene both Senate and historical precedent.⁴ In this case, consistent with the prevailing legal theory and historical precedent, the Senate voted to affirm the constitutionality of this current trial—a decision that I fully supported.⁵ Thus, after addressing the threshold Constitutional issue, the question before every Senator in this trial became twofold—(1) did the former President do what he is

charged with in the Article?; and (2) if so, does that action warrant conviction and disqualification from holding future office?

THE BIG LIE DEBUNKED

The public record demonstrates clearly that the former President engaged in the conduct outlined in the Article of Impeachment put forward by the House of Representatives. We watched his actions with our own eyes. We heard his conspiracy theories and baseless accusations with our own ears. For months after the election, all of America witnessed the former President's deliberate repetition of the "Big Lie;" he repeatedly claimed—without any evidence—that the 2020 general election was rigged and stolen from him.⁶ In furtherance of this falsehood, the former President has made numerous claims, all easily and consistently rebutted, regarding the votes cast in multiple battleground states. As the Senior Senator from Pennsylvania, a state that the former President relentlessly attacked after the election, I believe it is important to debunk the numerous false statements that the former President asserted regarding the Pennsylvania Presidential election.

Prior to the election, it was widely reported that the public should "beware" of early U.S. election tallies because of the unprecedented amount of mail-in voting and the different ways that states were processing ballots due to the COVID-19 pandemic.⁷ In Pennsylvania specifically, Democratic voters were outpacing Republican voters by a 3-to-1 ratio in mail-in voting.⁸ Since the mail-in votes would be the last to be counted in most counties, experts cautioned voters that the former President might appear to be winning in the early returns on election night (a "Red mirage") only to lose that lead as election officials counted more mail-in ballots in the days after Election Day (a "Blue shift").⁹

Despite these warnings, the former President attempted to sow doubt, even before Election Day, about votes counted after November 3. A week before Election Day, he indicated that "counting ballots for two weeks" after Election Day was "totally inappropriate" and he did not believe it was consistent with our Nation's election laws.¹⁰ To be clear, there is nothing improper or illegal about election officials counting legally cast votes after Election Day. Nonetheless, as election officials in Pennsylvania began to process the heavily Democratic-leaning mail-in ballots in the days following Election Day and the former President's "Red mirage" predictably turned to a "Blue shift" in favor of President Biden, the former President claimed that officials were "finding Biden votes all over the place."¹¹ In reality, election officials in Pennsylvania were simply counting legally cast votes. As Republican Philadelphia Commissioner Al Schmidt said: "In the birthplace of our Republic, counting votes is not a bad thing. Counting votes cast on or before Election Day by eligible voters is not corruption. It is not cheating. It is democracy."¹²

Relatedly, the former President also claimed that in Pennsylvania, "tens of thousands of votes were illegally received after 8 P.M. on Tuesday, Election Day, totally and easily changing the results."¹³ Here again, the former President was lying. In September 2020, the Pennsylvania Supreme Court extended the mail-in ballot receipt deadline in Pennsylvania by three days because of the unprecedented circumstances caused by the COVID-19 pandemic.¹⁴ The Pennsylvania Supreme Court's decision did not permit eligible voters to vote after Election Day. Rather, pursuant to the Free and Equal Elections Clause of the Pennsylvania Constitution, the court explained that bal-

lots mailed by Election Day could still be counted if those ballots were received within three days of Election Day.¹⁵ In addition to lying about whether it was legal to receive ballots after Election Day, the former President drastically overinflated the number of ballots received after Election Day in Pennsylvania. In fact, there were only approximately ten thousand ballots received after Election Day and those ballots were not even included in Pennsylvania's certified election results.¹⁶ Since President Biden won Pennsylvania by over eighty thousand votes, the ballots received after Election Day would not have made any difference in Pennsylvania's Presidential election outcome.¹⁷

In another tweet, the former President claimed that Pennsylvania prevented his campaign officials "from watching much of the Ballot count."¹⁸ Again, the former President was lying. In fact, in response to a judge's question during one hearing on whether there were election observers in the canvassing room, a lawyer representing the former President offered the seemingly bizarre concession that there was "a non-zero number of people in the room."¹⁹ Furthermore, multiple courts confirmed that the former President's campaign presented no evidence suggesting that his campaign's observers were treated any differently than the observers for the Biden Campaign.²⁰

The former President's lies did not stop there. In late November, the former President tweeted that over a million votes in Pennsylvania were "created out of thin air."²¹ This is a lie. Here, the former President was referring to a conspiracy theory offered by Republican State Senator Doug Mastriano, who claimed that the Pennsylvania Department of State was reporting an extra 1.1 million mail-in votes in Pennsylvania.²² Senator Mastriano indicated that Pennsylvania had reported mailing out "1,823,148 ballots, of which 1,462,302 were returned," but he indicated that a dashboard on the Department of State's website recorded over 2.5 million mail-in ballots in the general election.²³ While Senator Mastriano did not include sources for his data, it was easy to determine that he was conflating different datasets from the general election and the June primaries. A dataset from the Pennsylvania Department of State clearly detailed that there were 1,823,148 mail-in ballot request for the June 2020 primaries²⁴—the exact number that Senator Mastriano cited—while Pennsylvania's official returns for the 2020 general election clearly illustrated that over 2.6 million voters cast a ballot by mail in the Presidential election.²⁵

In another tweet on December 28, the former President claimed that there were "205,000 more votes than there were voters" in Pennsylvania.²⁶ This too is another lie. Again, the former President appeared to be referencing yet another conspiracy theory offered by another state legislator, Representative Frank Ryan.²⁷ Representative Ryan claimed that the official election returns included 205,000 more votes than those listed in Pennsylvania's voter registration database.²⁸ Pennsylvania Attorney General Josh Shapiro explained that the voter registration database referenced by Representative Frank "is updated by each county individually, and this updating process can take several weeks following an election."²⁹ Thus, the Attorney General explained that it appeared that Representative Ryan was comparing "the official returns with incomplete data from the registration database to justify his baseless claim that there were more votes than voters."³⁰

Unfortunately, the above lies are merely a sampling of the former President's total lies about the election process in Pennsylvania and across the Nation. In addition to these

falsehoods, the former President claimed—without evidence—that there were “900,000 Fraudulent Votes” in Pennsylvania,³¹ that Dominion Voting Systems switched 221,000 votes from the former President to Joe Biden in Pennsylvania,³² and that “Fraud and illegality” were a “big part” of his election lawsuits in Pennsylvania.³³

The Pennsylvania election was administered safely and securely by thousands of Republican and Democratic election officials and selfless volunteers across the Commonwealth. We know this because as the House Managers highlighted in their trial brief, “[o]ur legal system affords many ways in which a candidate can contest the outcome of an election.”³⁴ The former President did not merely contest the election in Pennsylvania, but also in Arizona, Georgia, Michigan, Nevada, and Wisconsin.³⁵ In total, the former President and his allies filed 62 lawsuits in state and federal courts regarding the 2020 election and they lost every case, except for one minor lawsuit in Pennsylvania.³⁶

Furthermore, despite the President’s public claims of widespread illegalities, his legal team rarely attempted to allege fraud in his lawsuits.³⁷ In fact, his own attorney, Rudy Giuliani, explicitly confirmed that the Campaign was not alleging fraud during one high profile case in Pennsylvania by stating “[t]his is not a fraud case.”³⁸ Despite these facts, the former President continued to spread a different narrative—a Big Lie regarding a rigged election—on Twitter.

United States District Court Judge Matthew Brann of the Middle District of Pennsylvania highlighted the absurdity of some of the former President’s legal arguments in an opinion dismissing one of the Campaign’s lawsuits:

“Plaintiffs ask this Court to disenfranchise almost seven million voters. . . . One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens. That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more.”³⁹

In the Campaign’s appeal to the United States Court of Appeals for the Third Circuit, Judge Stephanos Bibas, a judge appointed by the former President,⁴⁰ wrote for a unanimous panel affirming Judge Brann’s initial decision.⁴¹ Judge Bibas wrote: “Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”⁴² The Presidential election was fair and lawful notwithstanding the many lies told by the former President.

THE FORMER PRESIDENT’S PATTERN OF CONDUCT

Despite losing case after case in federal and state courts, the former President was not deterred in his efforts to spread his Big Lie regarding a stolen election. Instead, he turned his attention to pressuring federal, state and local elections officials to overturn the election. In Georgia, he personally called the Secretary of State, Brad Raffensperger, and told him to “find 11,780 votes, which is one more than we have because we won the state.”⁴³

He also began an aggressive lobbying campaign against Vice President Pence.⁴⁴ Pursuant to the Twelfth Amendment, the Vice President counts each state’s certified Electoral College votes for President in a joint session of Congress.⁴⁵ However, the former President regularly lied about the constitutional duty of the Vice President. In another attempt to turn the election in his favor through illegitimate means, the former President suggested that Vice President Pence should violate his oath of office by refusing to count certain electoral votes for President Biden during the joint session.⁴⁶

After failing to overturn the election through the courts and his pressure campaign on other elected officials, the former President took aim for one more attack on American democracy. He summoned his mob of insurrectionists to Washington, D.C. on January 6, 2021 for a “Save America Rally” to coincide with the joint session of Congress.⁴⁷ He invited them. He incited them over the course of months and on January 6. Finally, he directed this Trump mob to the Capitol to subvert and obstruct Congress from conducting its constitutional obligation to certify the 2020 Presidential election.

On January 6, we heard the former President continue to spread his Big Lie at his rally. As Attorney General Shapiro detailed, the former President “inflamed the crowd by repeating the same debunked allegations about voter fraud in Pennsylvania and elsewhere. In his remarks, he repeated no fewer than eight false statements about Pennsylvania’s elections alone.”⁴⁸ He further incited the mob to “stop the steal” by declaring that “we fight, we fight like hell,” because “if you don’t fight like hell you’re not going to have a country anymore.”⁴⁹

The case for incitement is about far more than just the former President’s speech on January 6. This was about a pattern of conduct. It was about the former President’s autocratic leadership and calls for political violence throughout his Presidency. It was about a President who once bragged: “I have the tough people [supporting me], but they don’t play it tough until they go to a certain point, and then it would be very bad, very bad.”⁵⁰

I, as well as public officials in both parties, talk about fighting for public policy goals. We fight for health care. We fight for civil rights. We fight for equity and justice. However, when the former President tells his supporters to fight, it means something different because the former President has regularly condoned and encouraged violence against protestors and members of the press since he became a candidate in 2015. As Lead House Manager Jamie Raskin told us during the trial: “January 6 was a culmination of the President’s actions—not an aberration from them.”⁵¹ It was the former President’s pattern and practice of condoning and encouraging violent action.

For example, during remarks in October 2015, the former President—then a candidate—indicated that he would be a “little more violent” next time protestors interrupted one of his rallies.⁵² Video later showed the former President’s supporters forcibly dragging protestors out of the campaign event.⁵³ In a February 2016 rally in Cedar Rapids, Iowa, we saw the former President tell his supporters to “knock the hell” out of protestors and then promised to pay their legal fees resulting from any altercation.⁵⁴

In March 2016, a supporter of the former President sucker punched a Black man being escorted out of a campaign rally.⁵⁵ The former President’s supporter was later recorded as saying “[t]he next time we see him, we might have to kill him.”⁵⁶ Just days later, the former President defended those at

his rallies assaulting protestors by calling their actions “very, very appropriate.”⁵⁷ In another 2016 rally in Las Vegas, the former President commented that he would like to “punch [a protestor] in the face” before reminiscing about the fictional “old days” when violent behavior was allegedly more acceptable.⁵⁸ “You know what they used to do to guys like that when they were in a place like this?” he asked the crowd. “They’d be carried out on a stretcher, folks.”⁵⁹

This abhorrent behavior did not change when the former President entered office. In August 2017, after a rally of white supremacists resulted in three deaths and more than 33 other injuries in Charlottesville, Virginia, the former President offered perhaps the most disturbing comments of his Presidency when he suggested that there was “blame on both sides” and that there were “very fine people on both sides.”⁶⁰ In October 2018, we saw the former President praise and glorify the actions of current Governor of Montana, Greg Gianforte, after then-candidate Gianforte had body slammed and hospitalized a journalist in May 2017.⁶¹ Mr. Gianforte had already pled guilty to the assault.⁶²

In 2020, the former President further glorified violence by indicating that “when the looting starts, the shooting starts” in relation to the civil rights protests occurring after George Floyd’s murder at the hands of law enforcement in Minneapolis, Minnesota.⁶³ Later, we saw the former President direct federal agents to forcibly move hundreds of peaceful protestors outside of the White House so he could pose for a photo op in front of St. John’s Church in Washington, D.C.⁶⁴

In April 2020, in what turned out to be a dress rehearsal for the January 6 insurrection, we saw the former President tweet “LIBERATE MICHIGAN!” after the Governor of Michigan implemented several mitigation measures to address the COVID-19 public health crisis.⁶⁵ Nearly two weeks later, on April 30, armed protestors dressed in tactical gear sieged the Michigan State Capitol, waving the Confederate flag and wearing MAGA hats.⁶⁶ Rather than condemn those who had seized the state capitol waving Confederate flags, the former President encouraged the Governor of Michigan to negotiate with them: “The Governor of Michigan should give a little, and put out the fire. These are very good people, but they are angry. They want their lives back again, safely! See them, talk to them, make a deal.”⁶⁷ Just a few months following the capitol siege in Michigan, the FBI arrested thirteen men for “plotting to storm the Michigan State capitol building, launch a civil war, kidnap Governor Whitmer, transport her to Wisconsin, and then try and execute her.”⁶⁸

The former President’s pattern of conduct is indisputable. A reasonable person cannot dispute that the former President knew exactly what he was doing by perpetuating the “Big Lie,” summoning his crowd of insurrectionists on January 6 and telling them: “[I]f you don’t fight like hell, you’re not going to have a country anymore.”⁶⁹ The former President led his supporters to a breaking point and as he had predicted in the past—it was “very bad, very bad.”⁷⁰ There is simply no way to excuse the former President’s actions in this case.

AN ATTACK ON OUR DEMOCRACY

By encouraging his mob of insurrectionists to march on the Capitol and obstruct the Congressional certification of the 2020 election, the former President attacked the foundational principles of our democracy and the peaceful transfer of power. He did not merely endanger another branch of government and the Presidential line of succession. His actions led to at least five deaths,

injuries to nearly 140 members of law enforcement and untold collateral damage resulting from the carnage of that day.⁷¹ He endangered the lives of countless Congressional staffers and employees, members of the press and members of Congress. He put a target on the back of his own Vice President and his Vice President's family. His actions jeopardized our Nation's national security by tarnishing the United States' reputation abroad and emboldening violent extremists at home.

Furthermore, he has shown absolutely no remorse for any of it, even going as far to glorify the insurrection in the immediate aftermath of the attack. After the Capitol had been secured in the early evening of January 6 and Congress was making plans to resume its joint session, the former President turned to Twitter to release a statement. He did not denounce the violent insurrection, but rather he chose to continue to spread his Big Lie that the election was stolen from him and to call the insurrectionists "great patriots."

"These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever."⁷²

Ultimately, after carefully reviewing all of the evidence put forward in this case, I found that the House Managers more than exceeded their burden of proof. The former President's conduct violated his oath of office, endangered our democracy and jeopardized the United States' national security. Through this conduct, the former President committed a high crime against our Constitution. I voted to convict him in the most bipartisan Presidential impeachment proceedings in our Nation's history.⁷³

ENDNOTES

1. H.R. Res. 24, 117th Cong. art. I (2020).
2. PROCEEDINGS OF THE UNITED STATES SENATE IN THE IMPEACHMENT TRIAL OF DONALD JOHN TRUMP, S. DOC. NO. 117-2, at 122–46 (2021) [hereinafter "IMPEACHMENT PROCEEDINGS II"] (Trial Memorandum of Donald J. Trump, 45th President of the United States of America). See also Nicholas Fandos, *Republicans Rally Against Impeachment Trial, Signaling Likely Acquittal for Trump*, N.Y. TIMES (Jan. 26, 2021), <https://www.nytimes.com/2021/01/26/us/politics/republicans-impeachment-trump.html> ("By a vote of 55-to-45, the Senate narrowly killed a Republican effort to dismiss the proceeding as unconstitutional because Mr. Trump is no longer in office.").
3. See Ilya Somin, *Legal Scholars' Letter on Impeachment of Former Officials Makes Appearance in Trump's Senate Trial*, VOLOKH CONSPIRACY (Feb. 9, 2021, 3:10 PM), <https://reason.com/volokh/2021/02/09/legal-scholars-letter-on-impeachment-of-former-officials-makes-appearance-in/> (highlighting one letter signed by "constitutional law scholars across the political spectrum," including the co-founder of the Federalist Society).
4. IMPEACHMENT PROCEEDINGS II, *supra* note 2, at 48–97 (Trial Memorandum of the United States House of Representatives).
5. 167 CONG. REC. S609 (daily ed. Feb. 9, 2021).
6. See Larry Buchanan et al., *Lie After Lie: Listen to How Trump Built His Alternate Reality*, N.Y. TIMES (Feb. 9, 2021) ("In hundreds of public statements from Nov. 4, 2020, to Jan. 6, 2021, Mr. Trump repeatedly used phrases like 'we won the election' and 'won it by a landslide,' and he said that the election was 'rigged' and 'stolen' by the Democrats. Such assertions have been proven false by the courts and elections officials across the country.").

7. Chris Kahn & Jason Lange, *Explainer: Red Mirage, Blue Mirage—Beware of Early U.S. Election Wins*, REUTERS (Nov. 1, 2020, 6:12 AM), <https://www.reuters.com/article/us-usa-election-mirage-explainer-idUSKBN27H1A6>; David Wasserman, *Beware the "Blue Mirage" and the "Red Mirage" on Election Night*, NBC NEWS (Nov. 3, 2020, 8:27 AM), <https://www.nbcnews.com/politics/2020-election/beware-blue-mirage-red-mirage-election-night-n1245925>.

8. *Pennsylvania Could See a "Red Mirage" on Election Night. Here's Why*, 6ABC (Oct. 29, 2020), <https://6abc.com/pennsylvania-vote-count-in-red-mirage-mail-in-voting/7455361/>. See also Holly Otterbein, *Democrats Return Nearly Three Times as Many Mail-In Ballots as Republicans in Pennsylvania*, POLITICO (Nov. 3, 2020, 1:31 PM), <https://www.politico.com/news/2020/11/03/democrats-more-mail-in-ballots-pennsylvania-433951> (explaining that on Election Day, more than 1.6 million of returned mail-in ballots were from registered Democrats and 586,000 were from Republicans).

9. Brittany De Lea, "Red Mirage" Possible in Pennsylvania as Officials Urge Voters to be Patient, FOX NEWS (Nov. 1, 2020), <https://www.foxnews.com/politics/pennsylvania-red-mirage-officials-voter-patience>; Jonathan Lai, *How Does a Republican Lead on Election Night and Still Lose Pennsylvania? It's Called the "Blue Shift"*, PHILA. INQUIRER (Jan. 27, 2020), <https://www.inquirer.com/politics/election/pennsylvania-2020-election-blue-shift-20200127.html>.

10. Jeff Mason & Ernest Scheyder, *Trump Questions Counting Late Ballots as Biden Preaches Unity in Georgia*, REUTERS (Oct. 27, 2020, 10:46 AM), <https://www.reuters.com/article/usa-election-idUSKBN27C25G>.

11. Donald J. Trump (@realdonaldtrump), TWITTER (Nov. 4, 2020, 11:55 AM), <https://twitter.com/realdonaldtrump/status/1324032541544927233>. See also TRUMP TWITTER ARCHIVE V2, <https://www.thetrumparchive.com/> (last visited March 1, 2021) (archiving all of the former President's tweets).

12. Bill Whitaker, "It is Not Cheating, It is Democracy": A First-Hand Look at Ballot Counting in Pennsylvania, CBS NEWS: 60 MINUTES (Nov. 9, 2020), <https://www.cbsnews.com/news/pennsylvania-ballot-counting-2020-election-60-minutes/>.

13. Donald J. Trump (@realdonaldtrump), TWITTER (Nov. 7, 2020, 8:20 AM), <https://twitter.com/realdonaldtrump/status/1325065540390559745>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.

14. *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 369–72 (Pa. 2020)..

15. *Id.*

16. Memorandum from Pa. Att'y Gen. Josh Shapiro 7 (Feb. 10, 2021), <https://www.attorneygeneral.gov/wp-content/uploads/2021/02/Jan-6-Memo.pdf> [hereinafter "Att'y Gen. Shapiro Memo"].

17. *Id.*

18. Donald J. Trump (@realdonaldtrump), TWITTER (Nov. 9, 2020, 3:17 PM), <https://twitter.com/realdonaldtrump/status/1325895380983275524>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.

19. Katelyn Polantz et al., *Trump and GOP Lawsuits Challenging Election Fail in Court*, CNN (Nov. 6, 2020, 3:01 AM), <https://www.cnn.com/2020/11/06/politics/trump-and-gop-lawsuits-to-challenge-election-fail-in-court/index.html>.

20. *E.g.*, Donald J. Trump for President, Inc. v. Boockvar, No. 4:20-CV-02078, 2020 WL 6821992, at *13 (M.D. Pa. Nov. 21, 2020), *aff'd*, 830 F. App'x 377 (3d Cir. 2020); 830 F. App'x 377 at 388.

21. Donald J. Trump (@realdonaldtrump), TWITTER (Nov. 28, 2020, 12:09 AM), <https://twitter.com/realdonaldtrump/status/1332552283553476608>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.

22. Senator Doug Mastriano (@SenMastriano), TWITTER (Nov. 27, 2020, 1:59 PM), <https://twitter.com/senmastriano/status/1332398733401591808>. See also *Fact Check: Post Mixes Pennsylvania Primary and General Election Data to Suggest Vote-By-Mail Irregularities*, REUTERS (Dec. 1, 2020, 11:38 AM), <https://www.reuters.com/article/uk-fact-check-pa-mail-votes-primary-gene-idUSKBN28B5NW> [hereinafter "Reuters Fact Check"] (debunking State Senator Mastriano's claims).

23. *Id.*

24. *2020 Primary Mail Ballot Counts by County*, OPENDATA.PA, <https://data.pa.gov/Government-Efficiency-Citizen-Engagement/2020-Primary-Mail-Ballot-Counts-by-County/43wz-2ph2> (last updated Aug. 3, 2020). See also *Reuters Fact Check*, *supra* note 22 (debunking State Senator Mastriano's claims).

25. *2020 Presidential Election Official Return*, PA. DEP'T OF STATE, <https://www.electionreturns.pa.gov/> (last visited Mar. 1, 2021). See also *Reuters Fact Check*, *supra* note 22 (debunking State Senator Mastriano's claims).

26. Donald J. Trump (@realdonaldtrump), TWITTER (Dec. 28, 2020, 4:00 PM), <https://twitter.com/realdonaldtrump/status/1343663159085834248>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.

27. Press Release, Pa. State Rep. Frank Ryan et al., *PA Lawmakers: Numbers Don't Add Up, Certification of Presidential Results Premature and In Error* (Dec. 28, 2020), <http://www.repfrankryan.com/News/18754/Latest-News/PA-Lawmakers-Numbers-Don't-Add-Up-Certification-of-Presidential-Results-Premature-and-In-Error>. See also Ali Swenson, *There Were Not More Votes Than Voters in Pennsylvania*, ASSOCIATED PRESS (Dec. 29, 2020), <https://apnews.com/article/fact-checking-9887147615> (debunking State Representative Ryan's election claims).

28. *Id.*

29. Att'y Gen. Shapiro Memo, *supra* note 16, at 6.

30. *Id.* at 6–7

31. Donald J. Trump (@realdonaldtrump), TWITTER (Nov. 21, 2020, 11:54 PM), <https://twitter.com/realdonaldtrump/status/1330374020613758977>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.

32. Donald J. Trump (@realdonaldtrump), TWITTER (Nov. 12, 2020, 11:34 AM), <https://twitter.com/realdonaldtrump/status/132692626888544256>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.

33. Donald J. Trump (@realdonaldtrump), TWITTER (Nov. 28, 2020, 3:49 PM), <https://twitter.com/realdonaldtrump/status/1332788716818010114>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.

34. IMPEACHMENT PROCEEDINGS II, *supra* note 2, at 29 (Trial Memorandum of the United States House of Representatives).

35. *Id.*

36. *Id.*

37. Tessa Berenson, *Donald Trump And His Lawyers Are Making Sweeping Allegations of Voter Fraud In Public. In Court, They Say No Such Thing*, TIME (Nov. 20, 2020, 3:13 PM), <https://time.com/5914377/donald-trump-no-evidence-fraud/>.

38. *Id.*

39. Donald J. Trump for President, Inc. v. Boockvar, No. 4:20-CV-02078, 2020 WL 6821992, at *1 (M.D. Pa. Nov. 21, 2020), *aff'd*, 830 F. App'x 377 (3d Cir. 2020).

40. Press Release, White House, *Eleven Nominations Sent to the Senate Today* (June 19, 2017), <https://trumpwhitehouse.archives.gov/presidential-actions/eleven-nominations-sent-senate-today-3/>.

41. *Trump for President*, 830 F. App'x at 391.

42. *Id.* at 381.

43. IMPEACHMENT PROCEEDINGS II, *supra* note 2, at 32 (Trial Memorandum of the United States House of Representatives).

44. *Id.* at 40–42.
 45. U.S. CONST. amend XII.
 46. IMPEACHMENT PROCEEDINGS II, *supra* note 2, at 40–41 (Trial Memorandum of the United States House of Representatives).
 47. See, e.g., Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 19, 2020, 1:42 AM), <https://twitter.com/realdonaldtrump/status/1340185773220515840> (“Big protest in D.C. on January 6th. Be there, will be wild!”); Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 1, 2021, 2:53 PM), <https://twitter.com/realdonaldtrump/status/1345095714687377418> (“The BIG Protest Rally in Washington, D.C., will take place at 11.00 A.M. on January 6th. . . . StopTheSteal!”). See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.
 48. Att’y Gen. Shapiro Memo, *supra* note 16, at 1.
 49. IMPEACHMENT PROCEEDINGS II, *supra* note 2, at 43 (Trial Memorandum of the United States House of Representatives).
 50. Alexander Mallin, *Trump Warns “Tough” Supporters Could Turn Things “Very Bad” If Provoked*, ABC NEWS (Mar. 15, 2019, 11:05 AM), <https://abcnews.go.com/Politics/trump-warns-tough-supporters-turn-things-bad-provoked/story?id=61709959>.
 51. 167 CONG. REC. S647 (daily ed. Feb. 11, 2021).
 52. Fabiola Cineas, *Donald Trump is the Accelerant*, VOX (Jan. 9, 2021, 11:04 AM), <https://www.vox.com/21506029/trump-violence-tweets-racist-hate-speech>.
 53. *Id.*
 54. *Id.*
 55. *Id.*
 56. *Id.*
 57. Eric Levitz, *Trump on His Supporters Attacking Protesters: “That’s What We Need More Of,”* N.Y. MAG. (Mar. 11, 2016), <https://nymag.com/intelligencer/2016/03/trump-punching-protesters-is-very-appropriate.html>.
 58. Cineas, *supra* note 52.
 59. *Id.*
 60. 167 CONG. REC. S648 (daily ed. Feb. 11, 2021).
 61. Cineas, *supra* note 52.
 62. Merrit Kennedy, *Montana’s Gianforte Pleads Guilty, Won’t Serve Jail Time in Assault on Journalist*, NPR (June 12, 2017, 2:35 PM), <https://www.npr.org/sections/thetwo-way/2017/06/12/532613316/montanas-gianforte-pleads-guilty-wont-serve-jail-time-in-assault-on-journalist>.
 63. Cineas, *supra* note 52.
 64. *Id.*
 65. Donald J. Trump (@realDonaldTrump), TWITTER (Apr. 17, 2020, 11:22 AM), <https://twitter.com/realdonaldtrump/status/1251169217531056130>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.
 66. 167 CONG. REC. S648 (daily ed. Feb. 11, 2021).
 67. Donald J. Trump (@realDonaldTrump), TWITTER (May 1, 2020, 8:42 AM), <https://twitter.com/realdonaldtrump/status/1256202305680158720>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.
 68. 167 CONG. REC. S648 (daily ed. Feb. 11, 2021).
 69. IMPEACHMENT PROCEEDINGS II, *supra* note 2, at 43 (Trial Memorandum of the United States House of Representatives).
 70. See *supra* note 50 and accompanying text.
 71. See Caitlin Emma & Sarah Ferris, *Second Police Officer Died by Suicide Following Capitol Attack*, POLITICO (Jan. 27, 2021, 12:45 PM), <https://www.politico.com/news/2021/01/27/second-officer-suicide-following-capitol-riot-463123> (“Five people died as a result of the riots, and two officers later died by suicide—a death toll that has horrified lawmakers of both parties and led them to demand answers from Capitol security officials.”); Michael S.

Schmidt & Luke Broadwater, *Officers’ Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. TIMES (Feb. 11, 2021), <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html> (“At least 138 officers—73 from the Capitol Police and 65 from the Metropolitan Police Department in Washington—were injured. . . .”).

72. Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 6, 2021, 6:01 PM), <https://twitter.com/realdonaldtrump/status/1346954970910707712>. See also TRUMP TWITTER ARCHIVE V2, *supra* note 11.

73. Maggie Astor, *Impeachment Briefing: The Senate Acquits Trump*, N.Y. TIMES (Feb. 13, 2021), <https://www.nytimes.com/2021/02/13/us/politics/impeachment-briefing-the-senate-acquits-trump.html>.

Ms. KLOBUCHAR. Mr. President, as Senators in this proceeding, we were bound by two oaths, to support and defend the Constitution and to pursue impartial justice as we considered the Article of Impeachment filed against former President Donald Trump: a charge of incitement of insurrection.

The Framers of our Constitution gave us the tools to respond to a moment like this. Having lived under the tyranny of an unaccountable King, they were well aware of the risks of a President willing to abuse his or her power. William Davie, one of North Carolina’s representatives at the Constitutional Convention, argued that empowering the Congress was necessary to protect against the threat of a President who would spare “no efforts or means whatever to get himself reelected.”

Our system of checks and balances as laid out in our Constitution provides that the Congress can impeach a President for committing “Treason, Bribery, or other High Crimes and Misdemeanors.” The phrase was meant to encompass any offenses that, as Alexander Hamilton explained in Federalist 65, include an “abuse or violation of some public trust” and “injuries done immediately to society itself.” Impeachment is a remedy for this public harm.

Some of my colleagues argue that the Senate could not sit as a court of impeachment for a former President. But constitutional scholars from across the political spectrum agree that the plain language of the Constitution and the historical precedent are clear that the Senate has the power to hold former officers accountable for offenses committed while in office. The question was debated on the Senate floor, we had a vote, and a bipartisan majority decided that we should proceed. As Manager JAMIE RASKIN said, “[t]he jurisdictional constitutional issue is gone . . . We are having a trial on the facts.”

As we were all witnesses to what happened on January 6, the facts are clear. During the trial, we saw evidence that was haunting and chilling. But more than that, collectively, the evidence presented a clear indictment of President Trump’s role in threatening not only the lives of those at the Capitol, but the very lifeblood of our democracy.

President Trump’s actions on January 6 were consistent with a years-long effort to undermine faith in our democratic system. After spending months trying to delegitimize our elections and despite losing by more than 7 million votes, President Trump filed dozens of lawsuits and called into question the election results across the country. In court after court, the President’s claims were rejected. As Judge Bibas, who was appointed by President Trump, wrote for the Third Circuit, “Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”

In an attempt to delay the certification of the results, President Trump privately pressured State election officials, including asking Georgia’s Secretary of State to “find” 11,780 votes, a number that would flip the State in his favor. Thankfully, election officials followed the law, and by December 11, 2020, all States had certified the results of the election.

Despite the results being final, however, President Trump convinced his supporters that there was one last opportunity to interrupt the peaceful transfer of power: preventing the Congress from counting the electoral college votes. And they responded to his call. During the trial, we saw a video of a rioter yelling, “We were invited by the President of the United States!” and examples of the rioters’ social media posts telling President Trump they were there for him, including a photo of rioters storming the Capitol steps captioned, “This is me.”

Law enforcement, sworn to protect the Capitol, were repeatedly assaulted defending our temple of democracy and our very republic. We will never forget the shrieks of the police officer pinned in between the doors at the hands of the rioters, pleading for help. We will never forget Officer Harry Dunn, who fought against the violent mob for hours and, after it was over, broke down in tears, telling fellow officers he had been called the N-word numerous times that day. He asked: “Is this America?” Or Officer Eugene Goodman who ran to take on a growing group of the rioters by himself, diverting them away from the Senate Chamber and allowing Senators to move to a secure location.

Tragically, the attack on the Capitol also cost the lives of three brave officers, including Officer Brian Sicknick who died from injuries sustained while engaging with rioters. Two other officers died by suicide following the events of January 6: D.C. Metropolitan Police Officer Jeffrey Smith and U.S. Capitol Police Officer Howard Liebengood.

While much of the trial rightfully focused on what President Trump did on and leading up to January 6, in many ways what he did not do was even more dangerous. After he sent the mob to the Capitol, putting law enforcement

in danger and threatening the safety of the Vice President, President Trump did nothing to stop the violence. Despite calls from Republican leaders across the country, President Trump did not even send a tweet to defend our democracy. Hours after the rioters first breached the Capitol, he finally released a video and told the rioters: “we love you; you’re very special.”

President Trump betrayed his oath of office to preserve, protect, and defend the Constitution of the United States. He incited a mob to attack the Capitol and prevent the peaceful transfer of power, and for that, he should be impeached.

On January 6, we were all awakened to our responsibilities as Americans and as Senators. I will never forget walking to the House Chamber around 4 a.m., with shattered glass from broken windows strewn in the hallway, joined by Senator BLUNT, Vice President Pence, and alongside two young women who carried the mahogany boxes holding each State’s electoral votes. We knew we had to return to do our jobs, and that night, we made clear to all: Democracy will prevail.

Thank you.

Mrs. SHAHEEN. Mr. President, on January 6, 2021, the heart of American democracy was attacked by a violent mob seeking to stop the counting of electoral votes in Congress and the peaceful transition of power. The peaceful transition of power is the hallmark of any healthy democracy and the foundation of our government by the people. That tradition has endured in our country since the “Revolution of 1800” when John Adams lost his election to Thomas Jefferson, marking the first peaceful change of Executive party in the United States. Years later, Jefferson would write about the “Revolution of 1800” and say, “for that was as real a revolution in the principles of our government as that of 76 . . . not effected indeed by the sword . . . but by the rational and peaceable instrument of reform, the suffrage of the people.” Sadly, the attack on the Capitol was an attempt to return to the “sword,” and it was incited by the President of the United States.

Donald Trump’s actions leading up to and on January 6 demonstrated what I believed following his first impeachment: He was unfit for the Presidency and betrayed his oath to faithfully execute the office of President and preserve, protect, and defend the Constitution. Donald Trump engaged in a months-long campaign of lies and misinformation about voter fraud in the 2020 election to mislead the American people and maintain power. This campaign was waged with a singular purpose: to overturn a free and fair election through any means necessary. It included calls to State election officials in Georgia where he urged them to “find votes” that would allow him to win the State; wild conspiracy theories that voting machines had been rigged against him; and baseless law-

suits that were rejected more than 60 times by Federal courts at all levels. This insidious effort culminated at the “Save America” rally on January 6 when the former President urged his supporters to “fight like hell” and directed them to march on Congress where the counting of electoral votes had begun.

The House Managers presented a detailed timeline of the former President’s actions before, during, and after the election that exposed his effort to subvert the Constitution and defy the will of the American people. The evidence presented against the former President demonstrated that he sought to undermine and ultimately overturn the results of the 2020 election. It showed that when his challenges in court had failed and the electoral results had been certified, he turned his attention and all the power of the Presidency to January 6. He encouraged his supporters to come to DC to “stop the steal” and pressured former Vice President Pence to assert power he did not have under the Constitution to overturn the election. Trump amassed a crowd of individuals waiting for his direction, including armed individuals who had planned an attack for weeks in response to the President’s claims that the election was stolen.

The former President’s actions had deadly and destructive consequences. Insurrectionists stormed the Capitol building, desecrating the seat of American Government and the physical manifestation of freedom for people across the world. The insurrectionists viciously beat police officers defending our democracy, vandalized the building, and terrorized those inside. All the while, the mob chanted “hang Mike Pence,” “President Trump sent us” and “traitor, traitor, traitor.” When the attack was over, hundreds of police officers and others were injured, and five people were dead, including a brave Capitol police officer who lost his life defending our Capitol. The attack was viewed across the world and has undeniably tarnished America’s reputation as a beacon of freedom and democracy.

What was the former President’s response to this treasonous attack on our constitutional process? It was to repeat the sinister lies that had led to the attack in the first place and refer to the insurrectionists as “great patriots” whom he loved. The House Managers showed that the President could have stopped the attack, but he chose instead to continue his effort to obstruct the counting of the electoral votes. According to the testimony of Congresswoman HERRERA BEUTLER submitted to evidence, the former President responded to House Minority Leader KEVIN MCCARTHY’s pleas for help by saying, “Well, KEVIN, I guess these people (the insurrectionists) are more upset about the election than you are.” These are not the actions of a President trying to defend the Constitution and uphold his oath of office; they are

the actions of an individual intent on retaining power by any means necessary.

The actions of Donald Trump before, during, and after the attack on the Capitol reflected our Constitution’s Framers greatest fear that a president would do anything to retain power contrary to the will of the people. They knew well the dangers of a despot and the capacity of power to corrupt the Republic they had established. That is why I voted to convict the former President to protect our system of government from those who would use their office to undermine our Constitution. Senate precedent, history, and tradition clearly demonstrate that a former President could be convicted having been impeached by the House while still in office.

The former President’s legal team made no persuasive argument as to how his remarks on January 6 would be considered protected speech under the First Amendment or why he could not be convicted as a former President. As House Manager RASKIN said during his argument, “if this is not impeachable conduct then what is?” I believe it fits squarely within the high crimes and misdemeanors identified as an eligible offense for impeachment in the Constitution. Thus, I exercised my responsibility as a juror to vote to convict and ensure that the actions of the former President would not go unchecked.

Donald Trump betrayed his oath of office and he betrayed the American people. His actions must not go unanswered. The oath that I took and my allegiance to it require that I preserve, protect, and defend the Constitution by voting to convict a former President whose zealous pursuit of unchecked power will forever be remembered as one of the darkest days in American history. As a U.S. Senator, I will continue to take a stand against actions that violates the fundamental norms and ideals of American democracy.

Mr. BENNET. Mr. President, for the second time in over a year, events compelled the Senate to hold an impeachment trial for President Donald Trump. By once more acquitting the President despite overwhelming evidence of his guilt, the Senate has again abdicated its responsibility to the American people and our democratic Republic.

The Founders fashioned our constitutional system to at once defy history and reflect its enduring lessons. They understood that since the first human societies, rule of the strong had prevailed across ages of warlords, monarchs, emperors, and tyrants. From the examples of ancient Greece and Rome, they also knew that rule by the people was the fragile, flickering exception.

To ignite America’s experiment in self-government, the Founders handed us a constitutional system unique in human history, with inalienable rights for the people, free and fair democratic elections, the rule of law, and coequal

branches of government to check the unbridled ambitions that risked dragging us into tyranny. Our system was never perfect—far from it—but over 234 years, Americans have fought and sacrificed to make it more democratic, more fair, and more free.

The Founders also understood that, however well-crafted the Constitution may be, its fate would inevitably depend on the public officials sworn to protect it. They could give the Senate the unique power to convict a President, but they could not guarantee Senators would exercise that power when the moment required it.

Their fears were realized on February 13, 2021, when the Senate failed to convict President Trump, a man who defied every standard of conduct and decency the Founders expected of public officials.

Months before Americans cast their ballots, Donald Trump made our democracy his enemy—manufacturing false claim after false claim to undermine the 2020 election. He warned the election would be stolen or rigged, dead people would vote, and voting machines were not trustworthy. He repeated these claims incessantly on social media, at his rallies, and in interview after interview on cable news. He repeats these lies to this day.

When Donald Trump lost the election by over 7 million votes, he refused to concede. Instead, he waged a months-long war against the peaceful transition of power. First, he challenged the election results in court. He lost 61 out of the 62 cases, often being howled out of court by Federal judges, many appointed by the President, for failing to produce any evidence of widespread fraud. Former Attorney General William Barr, one of the President's most steadfast allies, confirmed that there was no such evidence.

So the President changed course. He threw the weight of his office against State and local officials hoping he could coerce them into overturning their States' lawfully conducted election. He called election officials in Wayne County, MI. He summoned State senators from Michigan and Pennsylvania to the White House to urge the legislature to intervene. His aides hounded the Governor of Arizona to echo the President's baseless claims about the election. Most notoriously, he browbeat Georgia Secretary of State Brad Raffensperger in a recorded phone call to "find" another 11,780 Trump votes and badgered the Vice President to reject the certification of the electoral results. In my view, these actions alone warranted impeachment. But he didn't stop there.

In the end, President Trump stopped at nothing. As Congress gathered on January 6 to certify the electoral college results, he incited a mob to invade the Capitol and "stop the steal." They scaled, as if it were an enemy rampart, the platform built for President-elect Biden's inauguration and the peaceful transition of power. They chanted

President Trump's name as they smashed doors, broke windows, and looted private offices. They repeated the President's lies as they cursed, speared, and bludgeoned the men and women of law enforcement who defended our democracy.

At virtually every step of the way, our constitutional system held its ground because patriotic Americans fulfilled their obligation to our Republic. From the Capitol Police to the non-partisan election officials, to the State and Federal judges, to the Vice President of the United States—all refused to bend to the President's lawless demands. We should shudder to think how events would have unfolded if these Americans had made a different choice.

Yet somehow, confronted with these examples of individual patriotism and the overwhelming evidence of the President's impeachable offenses, 43 Senators still voted to acquit, including the Senator minority leader, MITCH MCCONNELL.

The minority leader refused to contest the case laid out by the House managers. He conceded that President Trump was "practically and morally responsible for provoking the events" of January 6, committing what he called "a disgraceful dereliction of duty." Instead, the Senator hid behind a strained reading of history and dodged his duty to hold President Trump accountable on the feeble ground that the Senate lacked jurisdiction. Through this sophist sleight of hand, the minority leader tried to place one foot on the right side of history without taking the hard vote it actually required. In doing so, he provided cover to every Republican Senator who joined him to acquit President Trump, including many who have failed to denounce the former President for anything he has done to undermine American democracy.

The Constitution grants the legislative branch authority to hold accountable any President who would seek to undo our democratic system of government. This Senate's refusal to exercise this authority and convict Donald Trump is a stain on this body. We had the responsibility to serve as a check on his anti-American actions and reassert the standard of government our Founders imagined. We chose otherwise.

With the permission of the Senate's acquittal, Donald Trump refuses to admit his defeat and continues to mislead his supporters that the election was stolen. In so doing, he continues to perpetuate, in another form, the insurrection he unleashed on January 6.

Our democracy stands today, not as a result of our actions, but those of law enforcement officials at the Capitol and State and local officials in Michigan, Pennsylvania, Georgia, Arizona, and Wisconsin—men and women who didn't surrender to President Trump's tyrannical demands.

Nearly 2 months later, the U.S. Capitol remains ringed with razor-wire. As

I have walked through the perimeter each morning, I have reflected on those who kept us safe from the President's anti-democratic mob—the law enforcement officials, the people who maintain and clean the Capitol, congressional staff. They risked life and limb, not only to defend Senators and Representatives but to defend basic American principles of our constitutional order: free elections, the peaceful transition of power, the rule of law, and the separation of coequal branches of government.

And then I think about the State and local officials, many Republicans, who held their ground under pressure from the President of the United States, often accompanied by threats from angry citizens caught up in his "Big Lie" that an election he lost by over 7 million votes was somehow stolen from him. These brave men and women did their duty to protect our constitutional system.

They are true patriots no different than the millions of other citizens who have done their part to defend the way of life we share under our Constitution. They join the African-American regiments who defended the Union in the Civil War, the code talkers in World War II, and the sons and daughters of immigrants who have defended our country from Yorktown to Normandy to Kandahar.

The Constitution of the United States is not a machine that runs itself; it is an exercise in self-government. American citizens—including those elected to serve them in the Senate—must keep it working and always ensure that it becomes more democratic, more fair, and more free.

As Americans, we should take comfort that there have been many, from Frederick Douglass and Susan B. Anthony to the other courageous citizens who rose to moments far more difficult than our own to protect the Republic and push it closer still to our highest ideals.

They are why the United States remains, for now, the longest lasting government by the people in human history. But as the Founders understood, democracy will always be vulnerable to demagogues who stop at nothing to hold on to power. History will record the names of those who stood on the side of the Constitution, passing down to the next generation the high standard of citizenship our democracy demands. Hopefully, a future Senate will meet that standard.

Mr. BLUMENTHAL. Mr. President, in this impeachment trial, every Senator was a juror, but also a witness and victim of the violent insurrection Donald Trump incited. The case was straightforward. Former President Trump instigated an armed riot seeking to overthrow a lawful election and possibly even injure or assassinate elected officials.

I spent most of my career enforcing laws, including two decades as Connecticut's attorney general. In this

role, I learned the power and the significance of accountability. When wrongdoers enjoy impunity for their actions, they and others like them are emboldened.

The first time former President Trump was impeached by the House, he had pressured a foreign government to corrupt the American election process, extorting a vulnerable, fledgling democracy to help him cheat in a Presidential election.

This time, former President Trump's attack on American democracy was more direct and violent. The insurrectionists forced us to flee for our lives, to place desperate, seemingly final calls to loved ones. A Capitol police officer died protecting us.

I have the same fear now, only greater, that I felt at the close of former President Trump's last impeachment. By again refusing to hold former President Trump accountable, the Senate is paving the way for another would-be tyrant to break laws and norms to retain power.

We in the Senate are obligated to uphold our oaths to support and defend the Constitution against all enemies, foreign and domestic. Our oaths obligate us to hold former President Trump to account for his incitement of a violent attack on the U.S. Capitol, the symbol of American democracy around the world.

The case against Donald Trump was proven convincingly with videos and voice recordings so powerful that this printed word can never capture their force. The former President's offense in this case is as dangerous as it is straightforward. He spent months of his Presidency telling and retelling the "Big Lie." The lie that no matter how the American people voted at the ballot box, he was the only legitimate winner of the 2020 Presidential election. That the election was stolen from him, that anyone who disagrees is un-American, a traitor.

As Manager LIEU explained at trial, at a certain point in his efforts to undermine the 2020 election, "Trump ran out of non-violent options to retain power."

Donald Trump encouraged, emboldened, and even helped build a mob of violent extremists that he invited to Washington, DC, and incited to storm the Capitol. While some Members of Congress were serving the former President in seeking to subvert American democracy by objecting to vote counting, Trump was imploring the mob to do the same. He told supporters to "never give up" on the "Big Lie." He told them that "this election was stolen from you, from me, from the country." He said, "if you don't fight, you are not going to have a country anymore." He told the insurrectionists to go to the Capitol, and he even lied to them that he would be going with them.

The resulting violence, clearly foreseeable, was horrifying. They marched to the Capitol. Rioters broke windows

and breached the building. They killed a 42-year-old Capitol Hill police officer and Air Force veteran, Brian Sicknick. They did stop the vote counting, if only temporarily. They injured many.

Members of Congress removed congressional pins to avoid identification from the mob. Senators ran from the Senate Chamber. They ran for their lives. Rioters flew a Confederate flag, a symbol of hate that did not fly in the Capitol even at the height of the Civil War.

Donald Trump watched this deadly attack unfold with glee from the Oval Office. On national TV, he told the insurrectionists that he loved them. "I know you're hurt," he consoled the rioters. "We love you. You're very special." He did not lift a finger to help anyone threatened with violence, including his Vice President.

As a result of former Donald Trump's incitement, an angry mob stormed the Capitol with every intent to harm elected officials and disrupt the peaceful transfer of power. Not only has the world lost Brian Sicknick, two other Capitol Police officers have died by suicide. Several members of the mob were killed.

The Senate's failure to convict increases the specter of another would-be tyrant, as well as Donald Trump, seeking again to mobilize a mob to overthrow democracy. Violent extremism has been emboldened. It is a present, immediate danger.

My colleagues know that former President Trump lost the 2020 Presidential election. They know that more than 60 courts tossed out his attempts to drum up baseless allegations of voter fraud. They know that the director of Cybersecurity and Infrastructure Security Agency, a lifelong Republican, certified the election was safe and secure. And they know that former President Trump incited the insurrectionists to attack the Capitol on January 6.

Democracy is not our default state of being. Democracy thrives only so long as the institutions that support it thrive. And democratic institutions will only thrive and persist through hard work, active work, dedicated work of our elected officials. For 4 years, former President Trump continuously attacked our basic norms and institutions of democracy. For 4 years, he normalized chaos. Our job now—Republicans, Democrats, Independents—is to restore. We must dedicate ourselves to restoring the rule of law, the protections of rights, and the integrity of institutions. And that task starts with accountability for all those who perpetrated the damage.

Ms. HIRONO. Mr. President, I rise today regarding the second impeachment of Donald Trump.

The House managers made their case. Based on the evidence they presented and the events we all experienced, Donald Trump should be convicted and prohibited for holding office ever again for inciting a violent insurrection at the U.S. Capitol on January 6.

Through video, pictures, and quotes, they outlined how the President of the United States engaged in a months-long campaign to discredit the legitimate election results of the 2020 election—a deranged campaign that began before a single vote was cast.

This unprecedented campaign of misinformation, pushing the "Big Lie," infected a significant contingent of the President's supporters. They came to Washington, DC, at Trump's invitation and inciteful rhetoric. They followed his direction on January 6 to storm the Capitol and tried to stop us from carrying out our constitutional duty to certify the election for the lawful winner of the Presidential election, Joe Biden.

The evidence presented by the managers is solid and irrefutable, and the President's lawyers made almost no effort to try. Given the jury they were facing, I don't blame them. Almost every Senator in this Chamber was there that day. Senators OSSOFF, WARNOCK, and PADILLA weren't sworn in until January 20. We all experienced the unthinkable that day, and we are all processing it differently. The violent insurrection shook many of us to the core. For some of us, the events of that day were so chaotic that the full magnitude of what was happening wasn't clear at the time.

Both as part of the trial evidence and through interviews and statements, we have learned more fully the measure of danger we faced as Donald Trump's murderous mob assaulted the Capitol campus. The managers' case and other media has given us all a better picture of the terror.

There are stories of bravery, like that of Officer Eugene Goodman and his U.S. Capitol Police colleagues.

The footage of Officer Goodman misdirecting the mob marauding through these halls is remarkable. Put yourself in his shoes. How many of us would have acted as quickly in the face of a rushing wave of hate? He has rightly been commended for his decisive, nearly superhuman response. All across the complex, his colleagues battled with insurrectionists who assaulted them with bats, bear spray, and other weapons in close quarters—these were scenes from a war zone, not the heart of the U.S. Government. While their bravery is commendable, Capitol Police and the other law enforcement agencies that eventually assisted to restore order should never have been in that position. But for the President of the United States sending a mob of violent insurrectionists to the Capitol, they would not have.

There are other chilling stories that should make every American's heart race. The audio of the Speaker's staff barricaded in their office, whispering into the phone, voices trembling, begging for help. The silent Capitol security footage showing just how close the Vice President, Senators, Representatives, and staff came to harm. The videos of chanting, gleeful, rioters demonstrating their horrifying fealty to

Donald Trump's lies as they broke down doors and ransacked offices and the Senate floor. The story that my friend Senator MURRAY has told of being trapped in her office with her husband. The mob pounding on the door while he tried to hold it shut with his foot. The absolute terror she must have felt hoping that the door was locked and that help would come quickly. They were inches away. The rest of us there that day were at least feet away. I am sure that we all called, texted, and thought of loved ones. Trying to reassure them but not actually knowing if that was true. Feeling from far away their helpless anguish for us and the utter terror and disbelief that something like this could happen in our country. To the U.S. Capitol, of all places.

The U.S. Capitol is the heart of our democratic system of government. While we may disagree vociferously, debate passionately, and represent people and communities with deeply divergent views, Congress exists to find common ground without resorting to violence. This simple fact—that as a country we solve our problems through democratic institutions and debate—is a source of our strength and global leadership. I have strong disagreements with a number of my colleagues. I know many of them disagree with me. But each day we come to the Senate floor and voice those disagreements without fear for our safety. On January 6, that basic level of understanding—the very thing that separates our country from so many others—was shattered by the assault on the Capitol. And worst of all, that insurrection was incited by a sitting President of the United States.

In some respects, it is difficult to know how best to move forward from that awful day. We came back. We did our jobs. And we are still here doing what our constituents sent us here to do. The Capitol may have been changed indelibly for many of us.

Again, to turn to the words of my friend Senator MURRAY the bipartisan actions shown in Congress in the wake of the September 11 attacks helped to restore some semblance of safety and security. That common response is absent today.

To begin to heal, we need accountability. We need to live up to our constitutional oaths and the sacred duty our constituents bestowed on us when we were elected: to uphold the law, to stand for their values, and, when necessary, to stand for our own. We can only start to heal when we have accountability and justice for what happened. To achieve this, we need those who are in leadership positions to lead.

Republicans failed to lead last year when they voted to acquit Donald Trump for his corrupt actions in dealing with Ukraine by conditioning military assistance on receiving political dirt on Joe Biden. Their failure to lead, to hold Trump accountable, and frankly to constrain his mania, emboldened

him to push the boundaries of our political discourse further.

Republicans have another chance to stand up for our democracy and against authoritarianism. They have a chance to accept the reality that has been clearly outlined for them in video, audio, and their own experiences. They can make a strong statement that political violence is unacceptable in the United States. They can—and should—vote to convict Donald Trump and bar him from ever holding office again. This is the real first, meaningful step that we can take to achieve the unity that we all claim to want.

I will vote to convict. I hope that this time, more than one of them will be brave enough to lead by standing up and doing what is right.

Ms. WARREN. Mr. President, I would like to enter a statement into the record.

The President swears an oath to faithfully execute the Office of the Presidency and to “preserve, protect, and defend the Constitution of the United States.” At the very core of that oath is a commitment to democracy, to government of the people, for the people, and by the people.

President Trump tested that commitment. Americans endured a pandemic while casting their votes in the November 2020 election. Following that election, the outgoing President baselessly sowed doubt about its legitimacy and refused to commit to a peaceful transition of power. In the days leading up to January 6, 2021, President Trump agitated his most dangerous supporters, who had already shown a propensity for violence, and called on them to interfere with Congress' duty to formally count the votes of the electoral college. Donald Trump wanted a riot to take place on January 6. We know because he said so. And when police officers defending the Capitol were overrun by his mob, he did nothing. Democracy is at its most fragile at the moment of transition, and that fragility is exactly what the former President sought to exploit.

During President Trump's second impeachment trial, his defense tried to paint for Americans a picture of a President who called for peaceful protest and who bears no responsibility for the January 6 assault on the People's House. But the President's actions took place before our eyes. His conduct before, during, and immediately after the assault on the Capitol is well known to the American public. He is uniquely responsible for the events of January 6.

Americans spoke clearly and forcefully in November when they elected a new President. Donald Trump's attempt to cling to power through lies and violence is just what the Framers of our Constitution feared. But part of the brilliance of our Constitution's separation of powers is that we, the Congress, have the power and obligation to defend against such gross misconduct through impeachment.

I voted to convict and disqualify former President Donald Trump because he violated his oath of office and because our future leaders must know that such abuses of power will not be tolerated in a free and democratic society. I will continue to call out these abuses and to keep those in power accountable.

Mr. MARKEY. Mr. President, the essence of any American President's job is set forth in the oath he or she swears—an oath that the Founders considered so fundamental that they put it in the Constitution. And that job is to preserve, protect, and defend the Constitution of the United States.

A President who violates that oath has committed an impeachable offense. That is a truth. There can be no reasonable dispute that a President who fails at this basic responsibility is unfit to remain in office and cannot and should not be permitted to hold that office again.

Not only did Donald Trump fail to uphold his oath, he took steps intended to violate it. It wasn't mere negligence. It wasn't even recklessness. Donald Trump engaged in an active, willful, intentional attack on our Constitution and our democracy.

Donald Trump incited to violence and riot a mob that attacked the U.S. Capitol and our government. That is a high crime and misdemeanor. We all saw and heard the evidence during the trial. The video. The audio. The tweets. The statements. The affidavits.

Months before the election, Donald Trump laid the groundwork for this insurrection, arguing he would only lose the election if there were fraud. After he lost, he repeated over and over again the “Big Lie” that the election was stolen. He agitated his supporters who falsely and wrongly believed that the election was rigged.

Trump beckoned a mob to Washington for a rally when he knew the Congress would be counting the electoral ballots. Trump's people knew from law enforcement bulletins and intelligence that the mob was armed and dangerous. Yet, he riled them up and then sent them up Pennsylvania Avenue to the Capitol. That rally became an orgy of violence and hate. Mayhem and destruction ensued, all in Donald Trump's pursuit of staying in office beyond his term. Of ignoring our Constitution. Of preventing a peaceful transfer of power. Of promulgating the Big Lie. Donald Trump did not express horror or outrage at the scenes playing out live on television. He did not quickly and decisively urge his supporters to stop. He did not immediately call out the National Guard. He did not show any concern for the law enforcement officers being beaten, maimed, and even killed at the Capitol. He reportedly delighted in what was happening, unable to comprehend why others were not excited about it like he was. And he has never shown any remorse or an ounce of contrition or taken any responsibility. Instead, he

has maintained that he acted perfectly appropriately.

The Senate of the United States sat as an Impeachment Court, with Democrats and Republicans serving as jurors. But the vast majority of those Republicans were more interested in fealty to Donald Trump than loyalty to our country. They were more concerned about Trump's base than basic justice. They were willing to ignore the truth to embrace the Big Lie.

I had hoped the House managers would call witnesses. Clearly, there were individuals with direct knowledge of Trump's state of mind during the insurrection, the danger at the Capitol as it unfolded, and his support of it. But even before we debated potential witnesses, Republicans had made up their minds. They were unmoving in their fealty to Trump. Republicans were willfully blind to the truth and the facts of the case.

The rioters wanted to kill Vice President Pence and House Speaker PELOSI. They told us so. We know that the west side of the Capitol was breached around 2 p.m. and that the rioters had overrun the Capitol. We know that the mob was approaching the Senate floor when our session was abruptly recessed at 2:13 p.m. We know that Vice President PENCE was whisked off the Senate floor and that he was in mortal danger, as were all Members of Congress in their Chambers doing their constitutional duty. We know that all this was playing out in real time on television and that Donald Trump had to know it was happening. And yet, about 10 minutes later, at 2:24 p.m., knowing all this, Donald Trump tweeted an attack at his own Vice President. "Mike Pence did not have the courage to do what should have been done to protect our Country and our Constitution." And we know that around 2:26 p.m., Donald Trump called Senator TUBERVILLE not to ascertain what was happening, not ask how the Vice President was or to offer aid and assistance against the insurrection. No, Trump called to ask Senator TUBERVILLE to delay the certification. It is clear whose side Donald Trump was on.

There is no First Amendment defense to what Donald Trump did. The First Amendment has no application in an impeachment proceeding, which does not seek to punish unlawful speech, but to protect the Nation from a President who has violated his oath of office.

But even if the First Amendment applied, even if we bought Trump's lawyers' bogus claims that the First Amendment can be a defense, the argument utterly fails. Trump's lawyers relied on the Supreme Court's decision in *Brandenburg v. Ohio*, but *Brandenburg* explained that the First Amendment protects advocacy, "except where such advocacy is directed to inciting imminent lawless action and is likely to incite or produce such action." Once the Capitol was breached, the lawless action was no longer imminent, it was actual. And Donald Trump was still

tweeting words of encouragement to the rioters. There was a siege actually happening in the Capitol. There was no longer rhetorical fighting; there was actual fighting. On television. Live for everyone to see.

The House managers proved their case with facts and evidence. Donald Trump incited and relished in an effort to violently overthrow our government. He invited. He incited. He delighted.

Anyone who is opposed to abolishing the filibuster need only look at the vote to acquit and see how Republicans willfully blinded themselves to truth and facts in fealty to Trump and their party. Their votes to acquit once again show our hurdles to progress: Republican political calculations and their dereliction to truth and justice.

The final tally on the vote to acquit does nothing to reassure me that Republicans are willing to work together and transcend party politics. Republicans had the opportunity to recognize that faith in the Constitution is a faith that we all share. Instead, they ignored the Constitution for a Big Lie. How can we expect them to work in good faith with Democrats to respond to the big challenges facing our Nation when they refuse to accept undeniable facts?

The only reasonable conclusion based on the evidence presented at the trial was that Donald Trump committed an impeachable offense, should have been convicted, and should have been barred from holding future office. Republicans refused to accept or acknowledge that. I fear that with their votes to acquit, they have sown the seeds of another violent attack on our Constitution and our democracy.

Mr. SULLIVAN. Mr. President, the impeachment trial of former President Donald Trump marked the third time in 1 year that the Senate has had to confront significant constitutional and institutional questions with consequences that will undoubtedly reverberate into the future. As always, I am guided by the Constitution, historical precedent, and "a deep responsibility to future times," as stated by Supreme Court Justice Joseph Story, our Nation's first great constitutional scholar, two centuries ago. This is what has informed me during last year's impeachment, the electoral college certification in January, and now another impeachment.

This has been a disheartening episode for a divided America. Make no mistake: I condemn the horrific violence that engulfed the Capitol on January 6. All those who undertook violence on that day should be prosecuted to the fullest extent of the law. I also condemn former President Trump's poor judgment in calling a rally on that day, and his actions and inactions when it turned into a riot. His blatant disregard for his own Vice President, Mike Pence, who was fulfilling his constitutional duty at the Capitol, infuriates me. I will never forget the brave men and women of law enforcement—

some of whom lost their lives and were seriously injured—who carried out their patriotic duty to protect members of Congress that day.

However horrible the violence was—and how angry I have been about it—I believe that it is imperative, for the future of our democracy, to examine closely the totality of the precedents, impeachment proceedings, and evidence, and to be as dispassionate and impartial as possible in this case.

That is why I cast my vote, on February 13, 2021, to acquit former President Trump on the single Article of Impeachment, "incitement of insurrection."

The primary purpose of impeachment in our constitutional system is to remove an official from office—to, according to Justice Story, divest an official "of his political capacity." The House's single Article of Impeachment emphasized this need to remove President Trump from office. Regarding this case before the Senate, President Donald Trump had already been removed from office by a vote of the American people this past November. Thus, pursuing impeachment in this case creates a troubling precedent in which former officials—private citizens—can face impeachment and conviction.

Therefore, the fundamental issue in this impeachment trial is not removal from office but whether the Senate has or should accept jurisdiction to try, convict, and disqualify Donald Trump, a private citizen, from any future elected office based on the House's single article of impeachment—incitement of insurrection.

The House and Senate have never before claimed or exercised such impeachment jurisdiction over a former President. I do not believe that the Constitution empowers the Senate to have such impeachment jurisdiction. In his renowned "Commentaries on the Constitution," Justice Story comes to the same conclusion, although to be fair, there are others who do not. I believe that the precedents set in claiming that the Senate can try former Presidents who are private citizens have the very real potential to do significant long-term damage to our constitutional order, individual liberties, and the proper functioning of our Republic in a way that we will come to regret as a nation.

Additionally in this case, the House undertook a "snap impeachment" in 48 hours with no hearings, no witnesses, no record, and no defenses presented. When asked about this during the Senate trial, the House managers stated that constitutional due process protections for a defendant in an impeachment are "discretionary" or, in other words, not required. This troubling declaration is now a precedent in the House. Combining this "no Due Process/snap impeachment" precedent with the additional power of the Senate to try former officials, who are now private citizens, amounts to a massive expansion of Congress' impeachment

power never contemplated by our Founding Fathers. The temptation to use such power as a regular tool of partisan warfare in the future will be great and has the potential to incapacitate our government.

Those in favor of expanding impeachment jurisdiction to include the former President primarily point to the potential for Presidents or other officials to commit impeachable acts near the end of their term or shortly before resigning. The House managers called this a “January exception” to impeachment. They argued that this would allow such individuals to escape culpability and would frustrate the purpose of impeachment to hold public officials accountable. This is a legitimate concern. However, there are other remedies available to punish such conduct of a former President through the judicial system, if warranted. The Constitution explicitly provides that former officials can be subject to criminal prosecution for their actions while in office, regardless of impeachment. Moreover, even if such conduct eludes judicial review, the American people are well equipped to judge political conduct and pass their judgement upon it. For that reason, and as I emphasized last year following the previous impeachment trial, I believe it can be left to the wise judgement of the American people on whether or not the former President should be disqualified from future office.

Even if this Senate was empowered by the Constitution to hear this case, I do not believe that the House managers met their burden in proving the critical issue at trial—whether the former President intended there to be violence at the Capitol as a result of his speech at the Ellipse on January 6. Furthermore, the House managers claimed, in arguing their incitement charge, that First Amendment political speech protections do not apply to elected officials in impeachment proceedings. A conviction based on this breathtaking precedent has the potential to significantly further undermine core constitutional protections for Americans and their ability to undertake political speech in the future.

Finally, laced throughout the House managers’ presentations were subtle and not-so-subtle indictments, not just against the Capitol rioters who fully deserve condemnation but against all supporters of the former President, which of course includes many Alaskans. This sentiment is one that cannot and should not be allowed to be perpetuated. In my view, this will not bring about the kind of unity that our Nation needs now. In contrast to what some of the House managers implied at this trial, the vast majority of Americans and Alaskans who had supported President Trump were appalled by the violence on January 6. Such Alaskans supported this President because of his policies that helped our State. I will continue to work to make sure that these Alaskans’ voices are not silenced

and that this dispiriting chapter in American history won’t deter them from speaking out in defense of their beliefs.

This has been a difficult time for our Nation. My vote on February 13 was not in defense of the former President’s conduct on January 6 with which I fully disagreed, particularly his twitter attacks on Vice President Pence, as the Vice President undertook his constitutional duties to preside over the electoral college vote at the Capitol.

At the end of the day, my obligation is to rise above the passions of the moment and to carefully consider the decisions we make today and the ramifications they will have for our country’s future. I believe that my vote to acquit fulfills that obligation. I want Alaskans and Americans to know that throughout all of this, my guiding light has been both fidelity to Alaska and to our Constitution.

Ms. CORTEZ MASTO. Mr. President, during this impeachment trial, I have adhered to the oath I swore at the trial’s outset to “do impartial justice,” and I have listened with care to the facts and law presented to me as a juror.

These facts compel me to conclude that Donald Trump is guilty of inciting an insurrection against our Republic.

As the evidence presented by the House impeachment managers has made clear, Donald Trump used the powers at his disposal to ensure he could keep his grip on the Presidency even though he lost the election.

As the sitting President and a candidate for reelection, Donald Trump cast doubt on the results of that election for months, arguing that the only way he would lose at the polls was by fraud. Then, after losing to Joe Biden by a margin of 7 million votes in a free and fair election, Donald Trump claimed it was a “fraudulent election.”

As our system of government allows, Donald Trump turned to State and Federal courts to hear his allegations of widespread fraud. Some of those courts were presided over by judges who Donald Trump himself had selected. Again and again, those courts rejected the allegations of fraud as baseless.

Even Trump’s own Attorney General, William Barr, publicly declared that he had found no evidence of fraud that could have “effected a different outcome in the election.”

Faced with defeat in the courts, Mr. Trump nevertheless pressured officials at every level of both State and Federal government, including his own Vice President, Mike Pence, to change the election results.

When those efforts failed, he encouraged his supporters to come to Washington, DC, on January 6, the day when Congress would certify the electoral college votes for Joe Biden. He claimed that the election was stolen and tweeted “We have just begun to fight,” promising that on January 6, it would be “wild.” On December 11, 2020, Don-

ald Trump released two campaign ads claiming the election was a “fraud” and instructing his supporters to “stop the steal.” His campaign paid \$50 million dollars for the ads and ran them up to and until January 5, 2021.

Those who heeded that well-funded call understood what President Trump was asking. They didn’t just come with protest signs; they came with handcuffs and rifles, bear spray and tactical gear, Molotov cocktails and crossbows, and walkie talkies for communication.

On January 6, at a rally just before noon, Donald Trump asked the large crowd assembled before him to march on the Capitol. He asked them to fight “like hell” because “if you don’t fight like hell, you’re not going to have a country anymore.”

Despite knowing that there had been concerns for months about potential violence surrounding the election, Donald Trump urged those at the rally 20 times to “fight.” He also called on them to “stop the steal,” declaring “you’ll never take back our country with weakness.”

Inspired by President Trump’s words, his supporters began streaming toward the Capitol, where they eventually overwhelmed its defenses and threatened those inside. Those in danger included the Vice President, the Speaker of the House, Members of Congress, countless staffers, and thousands of members of law enforcement.

And when Donald Trump saw that his supporters were battling U.S. Capitol Police officers and DC police, he said nothing to stop them for more than 2 hours, even when he knew that Vice President Pence, one of his most loyal political allies, was in danger. More, he tweeted further criticism of Mr. Pence as the Vice President’s Secret Service detail was laboring to whisk Mr. Pence to safety.

Donald Trump was willing to do almost anything to convince Vice President Pence to violate his duty to the Constitution, and so the Vice President had a target on his back.

In other words, those who came to Washington at former President Trump’s request and attacked the seat of our democracy were trying to do exactly what they believed Donald Trump asked them to: prevent the certification of Joe Biden as President-elect.

That is why they frankly admitted, both during the Capitol riot and later to law enforcement, that they were at the Capitol because “[o]ur president wants us here.”

In response to all these facts, Donald Trump argues that the Constitution does not permit ex-Presidents to be tried for impeachment and that the First Amendment protects his right to encourage an attack on our democracy. These arguments are lawyerly fig leaves. Mr. Trump relies on them so heavily because his own behavior is indefensible.

The vast majority of legal scholars agree that the First Amendment does

not apply in this instance because the incitement of an insurrection is not protected speech under the Constitution. They also believe the Constitution allows for the impeachment and trial of public officials after they leave office, particularly when, as in this case, the public official was impeached by the House of Representatives while still in office.

Otherwise, all an office-holder would have to do to protect him or herself from punishment would be to resign just before impeachment. The Senate has implicitly or explicitly agreed with this view three times in our Nation's history; first, in the very first impeachment trial against former Senator William Blount of Tennessee, held during the lifetime of the Founders; second, in 1876 when Secretary of War William Belknap resigned just hours before the House voted to impeach him for bribery and corruption; and finally, in this impeachment trial of Donald Trump, when a bipartisan majority of the Senate agreed that this trial could proceed in spite of the defendant's objections to its constitutionality.

My colleagues understand that the Constitution gives Congress the power to impeach, convict, and disqualify a former officeholder. This is true because otherwise, the country would be vulnerable to a President of either party who could flout any law but resign to be insulated from consequences.

As the House managers have argued, if anything is impeachable, it is a President inciting his followers to violence to overturn a legitimate election.

Our Founding Fathers held democracy sacred. They feared a demagogue, a leader who would pervert the Constitution in order to keep power, and they sought to protect the new Republic from such a president.

Donald Trump is the person the Framers feared. He poses an existential threat to American democracy. He has shown himself willing to use almost every measure at his disposal to gain and retain power, even if it means overturning a free and fair election through violence.

We can have no doubt what our Founding Fathers would have made of him: He was exactly the kind of person they wanted to prevent from holding and wielding power.

We have seen over the course of this election the profound risks of trifling with our democracy and undermining the legitimacy of our elections. We cannot let future candidates of either party believe that in America, the way to win is to lie and cheat, to whip a crowd into a frenzy, to turn it on public servants and law enforcement alike. We have to reestablish in our politics our absolute commitment to the idea that we resolve our disputes in our courts and in Congress, not by wielding weapons against lawmakers.

Our Founding Fathers made clear in the very preamble to the Constitution that "We the people . . . in order to form a more perfect union, establish

justice, ensure domestic tranquility . . . do ordain and establish this Constitution." America cannot be tranquil unless its leaders forswear violence and stand up for democracy. That is why I voted to convict Donald J. Trump of high crimes and misdemeanors against the American people.

Unfortunately for our country, many of my colleagues did not agree. I know this is difficult news for many American patriots, who, just as I do, love and cherish our democratic traditions, the rule of law, and the centuries-old tradition of the peaceful transfer of power. To that majority of Americans, I want to say: We must not lose faith in our system of government. We must work all the more diligently to protect it.

Right after Supreme Court decided the Dred Scott case—the most odious case in our long legal history—the great abolitionist and orator Frederick Douglass gave a speech. I turn to this speech whenever I am in need of hope.

Precisely when slavery seemed to have won a decisive victory, Frederick Douglass, himself a former slave, said in that speech that his "hopes were never brighter than now." He believed that the world would see what a "scandalous tissue of lies" the Supreme Court's decision in Dred Scott was. And he was right. History holds that Court case as one of the most shameful in our history, and I believe it will likewise condemn Donald Trump's incitement of the Capitol attack. So today I remain hopeful because the people of Nevada and all Americans have been able to see the truth for themselves, and they understand that Donald J. Trump must never again be trusted to protect our sacred democracy.

Ms. SMITH. Mr. President, the facts and the evidence were overwhelming: Former President Donald Trump lied for months to his supporters, summoned them to Washington, and incited a violent insurrection against our government and our democracy. I voted to convict because no reasonable person can listen to all the evidence presented and believe otherwise.

Mr. MARSHALL. Mr. President, I would like to submit this statement for the record regarding the impeachment trial of former President Donald Trump. The statement reflects my thoughts on this complicated constitutional matter and its implications for future impeachments.

In 1787, the Articles of Confederation were failing, and our young Nation was struggling to address the many challenges it was being confronted with in its infancy. A collection of independent States, the newly formed country experienced much difficulty with the regulation of trade and commerce, foreign affairs, and other basic domestic civil issues. With calls for disunion multiplying, delegates to the Constitutional Convention met to deliberate and forge a new government and with it an Executive to help centralize the powers nec-

essary to form a strong republic. Having just shed the bonds of the British Monarchy and its infringements upon the liberties the delegates so desperately wanted to protect, there was much skepticism toward this idea. In order to abate these concerns, the Constitution's Framers provided for a means of removing an Executive, a Presidential impeachment.

After much debate over particular wording, article II, section 4 of the Constitution adopted by the delegates reads: "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

This is the fundamental impeachment provision contained in the Constitution and provides the primary evidence as to why the lone Article passed out of the House as well as the subsequent trial in the Senate, was unconstitutional. As this section shows, impeachment refers to "the President" and other officials, and it provides that that they shall be "removed from Office." Donald J. Trump is no longer the President of the United States and therefore can no longer be removed from office. He is a private citizen.

Further evidence that Donald Trump is no longer the President and therefore that this trial is unconstitutional can be found within the Senate's impeachment authority: Article 1, section 3 provides that "When the President of the United States is tried, the Chief Justice shall preside." Chief Justice John Roberts did not preside over the impeachment trial, and instead that role was filled by the senior Senator from Vermont, PATRICK LEAHY. In a statement, Senator LEAHY himself stated that the President pro tempore of the Senate "has historically presided over Senate impeachment trials of non-presidents." These facts demonstrate that Chief Justice Roberts declined to preside over the trial because he did not believe that he had a constitutional role and that Senator LEAHY acknowledged that Donald Trump was no longer an officeholder. Finally, article 1, section 3 provides, "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor." This reiterates that removal from office must occur before that person is disqualified from holding an office again. If the Founders had intended that disqualification be a separate judgment, then the Constitution would have clearly stated "or" rather than "and." The Constitution does not give the Senate the authority to try a private citizen or to remove him from an office that he no longer occupies.

It also does not give the Senate the authority to disqualify him from an office that he was not removed from.

I voted to acquit former President Donald Trump of the charge of inciting

an insurrection for the January 6 Capitol riot because of these basic concerns surrounding the constitutionality of the proceeding. The impeachment of a private citizen, driven by political obsession, sets a very dangerous precedent. What would prevent a Republican-controlled Congress from impeaching former President Barack Obama or Secretary of State Hillary Clinton? What about historical Presidents such as George Washington, whose pivotal legacy no longer appears to meet the moral standards of contemporary times? While the political retaliation against the President is certain to continue now that he is out of office, I am proud to have been a part of the minority in the Senate to stand up to this type of unconstitutional behavior and to acquit Donald Trump.

SENATE SUBCOMMITTEE ON EMERGING THREATS AND SPENDING OVERSIGHT RULES OF PROCEDURE

Mr. PETERS. Mr. President, Senate Standing Rule XXVI requires each committee to adopt rules to govern the procedure of the committee and to publish those rules in the CONGRESSIONAL RECORD not later than March 1 of the first year of each Congress. On February 26, 2021, a majority of the members of the Committee on Homeland Security and Governmental Affairs' Subcommittee on Emerging Threats and Spending Oversight adopted subcommittee rules of procedure.

Consistent with Standing Rule XXVI, today I ask unanimous consent to have printed in the RECORD a copy of the rules of procedure of the Subcommittee on Emerging Threats and Spending Oversight.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

117th Congress

RULES OF PROCEDURE FOR THE SENATE SUBCOMMITTEE ON EMERGING THREATS AND SPENDING OVERSIGHT OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS AS ADOPTED

February 26, 2021

1. Subcommittee rules. The Subcommittee shall be governed, where applicable, by the rules of the full Committee on Homeland Security and Governmental Affairs and the Standing Rules of the Senate.

2. Quorums.

A. Transaction of routine business. One-third of the membership of the Subcommittee shall constitute a quorum for the transaction of routine business, provided that one Member of the Minority is present. For the purpose of this paragraph, the term "routine business" includes the convening of a meeting and the consideration of any business of the Subcommittee other than reporting to the full Committee on Homeland Security and Governmental Affairs any measures, matters, or recommendations.

B. Taking testimony. One Member of the Subcommittee shall constitute a quorum for taking sworn or unsworn testimony.

C. Proxies prohibited in establishment of quorum. Proxies shall not be considered for the establishment of a quorum.

3. Subcommittee subpoenas. The Chair of the Subcommittee, with the approval of the Ranking Minority Member of the Subcommittee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing, provided that the Chair may subpoena attendance or production without the approval of the Ranking Minority Member where the Chair or a staff officer designated by the Chair has not received notification from the Ranking Minority Member or a staff officer designated by the Chair of disapproval of the subpoena within 2 calendar days, excluding Saturdays and Sundays and legal holidays in which the Senate is not in session, of being notified of the subpoena. If a subpoena is disapproved by the Ranking Minority Member as provided herein, the subpoena may be authorized by vote of the Members of the Subcommittee.

Immediately upon authorization of the issuance of a subpoena under these rules, a written notice of intent to issue the subpoena shall be provided to the Chair and Ranking Minority Member of the full Committee on Homeland Security and Governmental Affairs, or staff officers designated by the Chair and Ranking Minority Member for the full Committee, by the Subcommittee Chair or a staff officer designated by the Chair, and no subpoena shall be issued for at least 2 calendar days, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the Chair and Ranking Minority Member of the full Committee on Homeland Security and Governmental Affairs waive the 2-calendar day waiting period or unless the Subcommittee Chair certifies in writing to the Chair and Ranking Minority Member of the full Committee that, in the opinion of the Chair, it is necessary to issue a subpoena immediately.

When the Subcommittee or its Chair authorizes subpoenas, subpoenas may be issued upon the signature of the Chair or any other Member of the Subcommittee designated by the Chair.

SENATE SUBCOMMITTEE ON GOVERNMENT OPERATIONS AND BORDER MANAGEMENT RULES OF PROCEDURE

Mr. PETERS. Mr. President, Senate Standing Rule XXVI requires each committee to adopt rules to govern the procedure of the committee and to publish those rules in the CONGRESSIONAL RECORD not later than March 1 of the first year of each Congress. On February 26, 2021, a majority of the members of the Committee on Homeland Security and Governmental Affairs' Subcommittee on Government Operations and Border Management adopted subcommittee rules of procedure.

Consistent with Standing Rule XXVI, today I ask unanimous consent to have printed in the RECORD a copy of the rules of procedure of the Subcommittee on Government Operations and Border Management.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RULES OF PROCEDURE OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON GOVERNMENT OPERATIONS AND BORDER MANAGEMENT

(1) Subcommittee Rules. The Subcommittee shall be governed, where applicable, by the rules of the Committee on Home-

land Security and Governmental Affairs and the Standing Rules of the Senate.

(2) Quorums. For public or executive sessions, one Member of the Subcommittee shall constitute a quorum for the administering of oaths and the taking of testimony in any given case or subject matter. One-third of the Members of the Subcommittee shall constitute a quorum for the transaction of business other than the administering of oaths and the taking of testimony, provided that one Member of the minority is present. Proxies shall not be considered for the establishment of a quorum.

(3) Taking Testimony. In any hearings conducted by the Subcommittee, the Chair or the Chair's designee may swear in each witness prior to their testimony.

(4) Subcommittee Subpoenas. Subpoenas for witnesses, as well as documents and records, may be authorized and issued by the Chair, or any other Member of the Subcommittee designated by him or her, with the approval of the Ranking Minority Member of the Subcommittee, provided that the Chair may subpoena attendance or production without the approval of the Ranking Minority Member where the Chair or a staff officer designated by him or her has not received notification from the Ranking Minority Member or a staff officer designated by him or her of disapproval of the subpoena within two calendar days excluding Saturdays and Sundays, of being notified of the subpoena. If the subpoena is disapproved by the Ranking Minority Member as provided herein, the subpoena may be authorized by a vote of the Members of the Subcommittee.

A written notice of intent to issue a subpoena shall be provided to the Chair and Ranking Minority Member of the full Committee on Homeland Security and Governmental Affairs, or staff officers designated by them, by the Subcommittee Chair, or a staff officer designated by him or her, immediately upon such authorization, and no subpoena shall be issued for at least two calendar days, excluding Saturdays and Sundays, from delivery to appropriate offices, unless the Chair and Ranking Minority Member of the full Committee on Homeland Security and Governmental Affairs waive the two-calendar day waiting period or unless the Subcommittee Chair certifies in writing to the Chairman and Ranking Minority Member of the full Committee on Homeland Security and Governmental Affairs that, in his or her opinion, it is necessary to issue the subpoena immediately.

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS RULES OF PROCEDURE

Mr. PETERS. Mr. President, Senate Standing Rule XXVI requires each committee to adopt rules to govern the procedure of the committee and to publish those rules in the CONGRESSIONAL RECORD not later than March 1 of the first year of each Congress. On March 1, 2021, a majority of the members of the Committee on Homeland Security and Governmental Affairs' Permanent Subcommittee on Investigations adopted subcommittee rules of procedure.

Consistent with Standing Rule XXVI, today I ask unanimous consent to have printed in the RECORD a copy of the rules of procedure of the Permanent Subcommittee on Investigations.

There being no objection, the material was ordered to be printed in the RECORD, as follows: